

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA)	
BUMPUS, RONALD BIENDSEIL, LESLIE W.)	
DAVIS, III, BRETT ECKSTEIN, GLORIA)	
ROGERS, RICHARD KRESBACH, ROCHELLE)	
MOORE, AMY RISSEEUEW, JUDY ROBSON, JEANNE)	
SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS)	
THYSSEN, CINDY BARBERA, RON BOONE, VERA)	
BOONE, EVANJELINA CLEERMAN, SHEILA)	
COCHRAN, MAXINE HOUGH, CLARENCE JOHNSON,)	Case No. 11-CV-562
RICHARD LANGE, and GLADYS MANZANET,)	JPS-DPW-RMD
)	
Plaintiffs,)	Milwaukee, Wisconsin
)	
TAMMY BALDWIN, GWENDOLYNNE MOORE and)	February 24, 2012
RONALD KIND,)	8:30 a.m.
)	
Intervenor-Plaintiffs,)	VOLUME VII
)	A.M. SESSION
v.)	
)	
Members of the Wisconsin Government)	
Accountability Board, each only in his)	
official capacity: MICHAEL BRENNAN,)	
DAVID DEININGER, GERALD NICHOL, THOMAS)	
CANE, THOMAS BARLAND, and TIMOTHY VOCKE,)	
and KEVIN KENNEDY, Director and General)	
Counsel for the Wisconsin Government)	
Accountability Board,)	
)	
Defendants,)	
)	
(caption continued on next page))	

TRANSCRIPT OF COURT TRIAL

BEFORE DIANE WOOD, CIRCUIT JUDGE, ROBERT DOW, JR., DISTRICT
JUDGE, and J. P. STADTMUELLER, DISTRICT JUDGE

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 2 PETRI, PAUL D. RYAN, JR., REID J.)
 3 RIBBLE, and SEAN P. DUFFY,)

4 Intervenor-Defendants.)

5 VOCES DE LA FRONTERA, INC., RAMIRO)
 6 VARA, OLGA VARA, JOSE PEREZ, and)
 7 ERICA RAMIREZ,)

8 Plaintiffs,)

9 v.) Case No. 11-CV-1011

10 JPS-DPW-RMD

11 Members of the Wisconsin Government)
 12 Accountability Board, each only in his)
 13 official capacity: MICHAEL BRENNAN,)
 14 DAVID DEININGER, GERALD NICHOL, THOMAS)
 15 CANE, THOMAS BARLAND, and TIMOTHY)
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19 Defendants.)

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P R O C E E D I N G S

THE BAILIFF: Hear Ye, Hear Ye, Hear Ye, the United States District Court for the Eastern District of Wisconsin is now open, the Honorable Judges J. P. Stadtmueller, District Judge, Eastern District of Wisconsin, Diane P. Wood, Circuit Court Judge, United States Court of Appeals for the Seventh Circuit, and Robert M. Dow, Jr., District Judge, Northern District of Illinois, presiding.

All persons having business before this Honorable Court are admonished to draw near and give their attention for this special three-judge court convened pursuant to Title 28, United States Code, Section 2284 is now in session.

God save the United States and this Honorable Court. Please be seated and come to order.

THE CLERK: The Court calls Alvin Baldus, et al, versus Michael Brennan, et al, Case No. 11-CV-562 for a court trial. May I have the appearances, beginning with the plaintiffs.

MR. POLAND: Good morning, Your Honors. Doug Poland, Dustin Brown and Wendy Arends for the Baldus Plaintiffs.

MR. EARLE: Good morning, Your Honors. Peter Earle and Jackie Boynton on behalf of the Voces de La Frontera Plaintiffs.

MR. HASSETT: Good morning, Your Honors. Scott Hassett on behalf of the Plaintiff-Intervenors.

1 MS. LAZAR: Good morning, Your Honors. Assistant
2 Attorney General Maria Lazar and Dan Kelly, Patrick Hodan and
3 Colleen Fielkow on behalf of the Defendants Government
4 Accountability Board and their director and general counsel in
5 their official capacities only.

6 MR. SHRINER: Good morning, Your Honors. Thomas L.
7 Shriner, Jr., and Kellen Kasper for the Defendant-Intervenors.

8 JUDGE STADTMUELLER: Good morning, Counsel. We are
9 very grateful for your efforts in further streamlining the case
10 such that I believe we can, at a reasonable hour this evening,
11 bring it to a conclusion and begin that exercise today. We
12 will continue with the cross-examination of Dr. Mayer.
13 Dr. Mayer, if you would be so kind as to resume the witness
14 stand, keeping in mind that you are under the same oath that
15 you took when you began your testimony yesterday. Mr. Poland?

16 MR. POLAND: Your Honor, thank you. If I may, after
17 listening to Your Honor's comments yesterday evening before we
18 reconvened, and in the further interest of streamlining the
19 case further, we have proposed a two-part stipulation to the
20 Government Accountability Board. We would agree to dismiss our
21 Count 9, if they will enter into a stipulation.

22 The stipulation would be that the Government
23 Accountability Board has stated and continues to maintain that
24 any recall or special elections conducted between now and the
25 effective date of Act 43 for elections, that is November 6,

1 2012, the date of the 2012 general election, shall be conducted
2 under the 2002 boundaries established by this Court. The
3 second part would be it is constitutional to conduct any recall
4 or special elections between now and the date of the 2012
5 general election under the 2002 boundaries. Recall and special
6 elections conducted in 2011 were validly conducted under those
7 boundaries. We would dismiss Count 9, if we get that
8 stipulation, Your Honor.

9 MS. LAZAR: Good morning, Your Honors. As I told
10 counsel this morning, the Government Accountability Board,
11 through the Department of Justice, is not willing to make that
12 stipulation. Our position was pretty clearly stated on the
13 record by Attorney Kelly yesterday as to case or controversy
14 and whether or not this is a state court matter, and we
15 respectfully decline.

16 JUDGE STADTMUELLER: All right. Thank you. Anything
17 further, Mr. Kelly, before you resume?

18 MR. KELLY: Yes, Your Honor. We had further
19 discussions with counsel for the Plaintiffs on this issue of
20 streamlining. We wanted to bring some clarification to what we
21 discussed last night about what was remaining in the case. The
22 counts in the complaint are written broadly, and just to avoid
23 any confusion and to tighten up our examination, we want to
24 make clear that the issues remaining for the Court to decide
25 would be population movement/core retention, equal population

1 and the VRA claim -- delayed voting and the VRA claim as it
2 relates to the Latino districts, and then, of course, Count 9.
3 Then I spoke separately with Mr. Earle, and he has agreed that
4 he is dropping any plan that there was an intent to
5 discriminate against the Latino community in the drafting of
6 Assembly Districts 8 and 9. Have I stated that correctly?

7 MR. EARLE: Yes, that correctly states the
8 understanding between the -- at least between the Voces de La
9 Frontera Plaintiffs and the Defendants on that issue. We still
10 have some criticisms of the process that we think are relevant
11 to the argument, but we won't argue or pursue further proof
12 that there was intentional discrimination against the Latino
13 community in the redistricting process.

14 JUDGE WOOD: Just to be clear, are you still
15 asserting that there was a discriminatory effect for VRA
16 purposes?

17 MR. EARLE: Yes. I mean, yes. Well, I am not sure I
18 comprehend completely the scope of the question, Your Honor.

19 JUDGE WOOD: Well, there are two theories of
20 discrimination, typically, intentional discrimination and
21 discriminatory effect, and the VRA in its language includes the
22 latter, and I just want to know whether you are dropping that
23 or whether you are keeping that.

24 MR. EARLE: No, we are keeping the discriminatory
25 effect, that the Latino community has been, in effect, deprived

1 of its ability to elect the candidates of its choice by this
2 redistricting and the radical reconfiguration.

3 JUDGE WOOD: Okay.

4 MR. POLAND: I believe that does accurately state it.
5 I want to go over the list one more time to make sure we have
6 got it right.

7 Population movement, which is sort of the flip side of
8 core retention, I should say, equal population, delayed voting
9 or disenfranchisement, our Voting Rights Act claim with respect
10 to the Latino districts, and then Count 9, which is the recall
11 elections.

12 MR. KELLY: And then your count with respect to the
13 Latino districts does not include an intentional discrimination
14 element?

15 MR. POLAND: We will join with the stipulation that
16 Mr. Earle has reached.

17 MR. KELLY: Very good.

18 MR. HASSETT: Your Honor, if I may, the Act 44 claim
19 remains on behalf of the Plaintiff-Intervenors.

20 JUDGE STADTMUELLER: All right. Thank you. With all
21 of those understandings, I believe, Mr. Kelly, we're now ready
22 to proceed with the balance of your examination of Dr. Mayer.

23 MR. KELLY: Thank you, Your Honor.

24 (Kenneth Mayer resumes the stand.)

25 CROSS-EXAMINATION (CONT'D)

1 BY MR. KELLY:

2 Q Good morning, Dr. Mayer.

3 A Good morning.

4 Q If you will give me just a few seconds here as I get myself
5 situated. All right. Dr. Mayer, if we could, I'd like to
6 circle back to something you mentioned yesterday on several
7 occasions. You said that you had seen no justification for any
8 of the concerns that you had noted with respect to population
9 movement, core retention or delayed voting, is that right?

10 A Other than the claims by the people who drew the map that
11 they elaborated or that they stated a general goal of reaching
12 equal population. Other than that, there was no specific
13 justifications for the things that I had noted.

14 Q All right. So that's the only thing that you recall about
15 the depositions, that they said that they were after equal
16 population?

17 A That's correct.

18 Q Okay. Do you recall Mr. Handrick testifying that they were
19 given specific instructions to address the Voting Rights Act
20 and how that would affect the districts that they drew?

21 A I don't recall that.

22 Q Did Mr. Handrick also discuss the need to take into account
23 the malapportionment specifically between the Milwaukee and
24 Dane County area?

25 A Yes.

1 Q Okay. And how that would require losing I believe it was .8
2 seats in the Milwaukee County area and adding it back into the
3 Dane County area?

4 A Again, I recall that, but I don't find that plausible
5 because as the map was drawn it was, in fact, entirely possible
6 to draw at least one additional district, assembly district,
7 within the county -- within Milwaukee County. So there were
8 justifications that were offered, and as far as the specific
9 ones that I mentioned or the specific concerns that I mentioned
10 as far as the municipal splits, I did not find any
11 justification.

12 I did mention that for the reconfiguration of Senate
13 Districts 21 and 22 there was a justification offered, which
14 was a claim that uniting the cities of Racine and Kenosha into
15 a single senate district placed together what the map drawers
16 considered a community of interest.

17 Q All right. So there were other justifications offered
18 besides equal population?

19 A That's correct, but I did not say that I saw no
20 justification for any of the moves. I believe I testified
21 about specific issues that came up on specific areas of the
22 map, not a general statement that there was no justification
23 for any of the decisions that the map drawers made.

24 Q Okay. So you recognized that the map drawers took into
25 account the fact that when there's a district that's

1 underpopulated and it's surrounded by districts that are
2 underpopulated, that there's going to be a ripple effect that's
3 going to affect population movement? You understood that?

4 A I don't intend to quibble, but the notion of a ripple effect
5 is, I think, a little bit of a more ambiguous issue. But, yes,
6 it is entirely correct the districts that are underpopulated,
7 the boundaries are going to have to shift.

8 Q Yes. And just harkening back to yesterday, you didn't draw
9 a map to see what the net effect of population movement would
10 be taking into account all of these different redistricting
11 criteria?

12 A That's correct.

13 Q Do you recall Mr. Handrick testifying that the core
14 retention reports, especially for Assembly District 81, were
15 incomplete because they didn't take into account that there was
16 some flipping of assembly numbering?

17 A I don't recall that specifically.

18 Q Okay. Did you review Mr. Handrick's second deposition
19 transcript?

20 A I did.

21 Q You didn't see it there?

22 A I don't recall.

23 Q Okay. Did you recall reading that Mr. Handrick testified
24 that as they were drawing the map, they specifically took into
25 account the issue of municipal splits?

1 A I do recall him testifying to that, yes.

2 Q Okay. And do you recall him testifying that he specifically
3 talked about how he addressed the City of Beloit and the split
4 that was there?

5 A I do believe I recall that, but, again, I inferred from that
6 that it was a general statement that it was necessary in order
7 to achieve equal population, and my point is that -- and in
8 that specific area, even without having drawn a statewide map,
9 that it would have been a relatively trivial process to
10 reconfigure the map in that area to not divide the City of
11 Beloit.

12 Q Well, sure. When you are not drawing a full statewide map,
13 any specific split is a trivial matter to address?

14 A Well, that's not what I said. What I testified to is in
15 those areas there were alternative configurations in that area
16 that if you move 19,000 people or shift 19,000 people and
17 redraw the assembly lines in the southern most city of the
18 state, the ripple effects are not necessarily going to be large
19 and it ought to be -- well, I believe it is possible to contain
20 them in the areas surrounding that city.

21 Q Okay. So you have a quibble with the prudential decision
22 that they made in the way that Beloit was handled?

23 A I'm not quite sure what you mean by the word "prudential."

24 Q Well, it's a subjective decision on how to handle a split
25 with respect to the City of Beloit, whether you have one, how

1 to split it, if you do, right?

2 A Except it's not an entirely subjective decision. It's a
3 decision that they made. The justification offered was a
4 general one about the need to do so in order to achieve equal
5 population. I believe that it should have been and was
6 possible to configure a map in that area that would not have
7 involved splitting the city not just between two assembly
8 districts, but the two senate districts.

9 Q Okay. Your testimony has not been that there were too many
10 municipal splits, is that right?

11 A That's correct.

12 Q So tell me, which municipalities would you have split, if
13 you had been drawing a full statewide map?

14 A I would have split as few as I could possibly have split.

15 Q But which ones?

16 MR. POLAND: Your Honor, may I object. We have
17 already stipulated we are not going to pursue municipal splits,
18 so I don't think we need to cover this area.

19 MR. KELLY: That's fine.

20 BY MR. KELLY:

21 Q Dr. Mayer, with respect to population movement, which
22 specific districts would you change to the population movement?

23 A Well, if I began with the -- with Act 43, I would have taken
24 another look at the districts where the number of people
25 shifted was widely out of proportion to the number who needed

1 to be shifted.

2 Q Okay. But which one?

3 A I can go through the list and tell you which districts I
4 would have looked at closely.

5 Q Well, pick one.

6 A Well, the 2nd Senate District which, by my calculation,
7 moved 346 times as many people as were necessary.

8 Q And you would have started there with your map?

9 A Well, no, not necessarily. If I were drawing the map, I
10 would -- I wouldn't just draw one map and conclude that was
11 sufficient. I would have explored a number of different
12 alternatives determining what happens when you begin in
13 different parts of the state. Obviously, it makes a good deal
14 of sense to start in Milwaukee, because it's the state's
15 largest city and it's also the city that presents the most
16 complex decisions not only because of the voting rights issues,
17 but because the relative population growth there -- Actually,
18 the city I believe lost a little bit of population. So if I
19 were drawing a map, that's where I would start, but you asked
20 which districts I would look most closely at.

21 Q I did. So let's do this. What senate district was that, 2,
22 did you say?

23 A Yes.

24 Q Okay. But that's not where you would start? You would
25 start somewhere else?

1 A Well, but I didn't draw a statewide map, as you have pointed
2 out.

3 Q Yes, I know. So here's what I want to know, though, because
4 you have testified to a reasonable degree of scientific
5 certainty that they moved too many people. You pick a starting
6 place. You say it's not Senate District 2. I want to know how
7 many people would you need to move in and out of Senate
8 District 2 by the time you got to that senate district?

9 A It's difficult to say.

10 Q It is, isn't it. You don't know?

11 A Sitting here, that's correct.

12 Q Okay. Do you care to pick any other district?

13 A We can go through the exercise, and the answer will be the
14 same, that my position is that it should have been possible and
15 was possible to create an alternate configuration that moved
16 less people. I will leave it at that.

17 Q All right. You believe it was possible, but you have not
18 tried to see if it was?

19 A I mean, I can state with virtual certainty that it was
20 possible, because it involves a number of decisions that were
21 made, and at any branch you have an ability to move in one
22 direction or the other.

23 Q Um-hum. And in going back through the map and controlling
24 for population movement as you would like to do, what would
25 be -- Can you tell me how many delayed voters there would be as

1 a result of that?

2 A I can tell you I can eliminate 72,000 right off the bat by
3 leaving the existing configuration of Senate Districts 21 and
4 22 unchanged other than the adjustments that are necessary in
5 order to achieve population equality.

6 Q All right. So you have 227,000 delayed votes left. After
7 you do your map, how many are there?

8 A I would also take a close look at Senate District 27 which
9 disenfranchised 49,000, nearly 50,000, and I'm quite certain
10 that I would have been able to adjust the boundaries there
11 making different decisions that reduced that disenfranchisement
12 perhaps not to zero, but -- And that's a senate district, as I
13 testified yesterday, that needed to shed 25,000 people.
14 Instead, there were 90,000 -- 60,000 moved in and 90,000 moved
15 out. I understand that that's an area of growth and that it
16 was necessary to reconfigure the districts, but, again, this is
17 not, you know, the hands of the map drawers are not tied when
18 they are in an area of the state such as that where they have
19 no alternative but to pursue only one path.

20 Q So what's your final number?

21 A If I could fix all 72 of the 50,000, 49,000, I infer that I
22 could probably drop that by probably 80 percent and get that
23 number down to 10,000, perhaps lower, so now I'm down to below
24 200,000.

25 Q All right. So you are still above, let's say, 17-some-odd

1 thousand?

2 A Okay.

3 Q Yes?

4 A Yes.

5 Q And would you find that to be an unconstitutionally large
6 number of delayed votes?

7 A Well, I would have taken a look -- Again, if I had gone
8 through the process of drawing the map, that would have been
9 one of the issues that I was concerned about. It is not
10 possible, and I testified so yesterday, that that number is
11 never going to be zero. Based on the last two court-drawn
12 maps, particularly the 2002 map, which I believe the
13 disenfranchisement number was 177,000, just making these two
14 changes I would be able to get it below that.

15 Q Well, let's talk about 2002. Can be put up Exhibit 1021 and
16 turn to Exhibit 29. Dr. Mayer, you were a retained expert in
17 the redistricting case in 2002, is that correct?

18 A Yes.

19 Q You were representing Democratic members of the Legislature?

20 A I was working for them, yes.

21 Q Now the situation there was a little bit different. There
22 wasn't a legislatively created map, right?

23 A That's correct.

24 Q The contest was to figure out how to draw -- how to have the
25 court draw an appropriate map?

1 A That's correct.

2 Q Now when we are having a court draw a map, is it even more
3 important that they look at issues such as delayed voting, or
4 does it not matter?

5 A Well, based on the decision, one of the key principles
6 articulated by the court was the principle of minimizing the
7 number of people who are disenfranchised.

8 Q All right. So let's take a look at Exhibit 1021. Would I
9 be correct -- And perhaps you will recall that in your chart
10 there are two proffered Democratic maps?

11 A Yes.

12 Q Dem A is --

13 A Can you raise this a little bit higher? Thank you.

14 Q Dem A and SB463, those were the Democratic maps?

15 A Yes.

16 Q Now this is a chart that you prepared, yes?

17 A That's correct.

18 Q And in that chart we see that the Dem Plan A --

19 A Let me save you some time, Counsel. I will focus on this
20 statement where I was comparing the two maps and concluded
21 explicitly that the Republican maps were better on this.

22 Q Well, thank you, but that doesn't quite get us to the end.
23 I do want to take a look at the numbers and then one of your
24 other conclusions in your report. So Dem A, your report that
25 you were supporting --

1 A Let's -- I don't mean to quibble, but my task in that case
2 was evaluate comparatively the maps that were provided, that
3 were offered by the different parties. Again, I did not
4 participate in the drawing of the maps. My task was to analyze
5 the maps on a number of criteria and present the results of
6 those analyses to the court.

7 Q Very good.

8 A Well, let me finish. I basically -- I think it's correct to
9 say that I had zero input into how the maps were drawn. I
10 believe there may have been some changes, although I can't say
11 for sure, about -- Well, actually, I am fairly sure that the
12 maps, once they had been presented to the court, were complete
13 and that I was not involved in the participation of drawing
14 those maps. I was simply offering an analysis of the
15 characteristics of the different maps and assessing which of
16 the maps were better on different sets of criteria.

17 Q Well, let's explore that. You would say that delayed
18 voting, that would be a neutral factor when you are talking
19 about a map in terms of partisan versus non-partisan. That's
20 neutral, right?

21 A Not necessarily.

22 Q Well, let's take a look at what you concluded in your report
23 to the Court in 2002. Let's turn to Page 39. All right. The
24 last sentence of the first paragraph under "Conclusion." Do
25 you see where it says "I," and that would be you, "I conclude

1 that the Democratic plans are marginally preferable on the
2 neutral factors, although the difference is very small?" Do
3 you see that?

4 A Yes.

5 Q Okay. And you were including delayed voting in your
6 representation to the Court that the Democratic plans were
7 marginally preferable overall on the neutral factors?

8 A Well, again, this is a semantic issue. There were two
9 elements of what I was -- what I did in these reports. The
10 bulk of the analysis was a very detailed and lengthy study of
11 the likely partisan implications of the map, the different
12 maps, which was appropriate because it was the court that was
13 being asked to draw the maps. So the issues of partisan
14 fairness, while not really an issue when a legislature draws a
15 map, are very important to the court.

16 So this signifies that I simply placed more emphasis on
17 the -- on my analysis of the partisan implications, but you are
18 suggesting that because I wrote a report that presented plans
19 where the disenfranchisement numbers were higher than they were
20 under this plan, that means that I'm being hypocritical in
21 claiming that the Republican -- that Act 43 disenfranchises too
22 high a number of people. In that case I was not asked to
23 explore alternatives, I was not asked to offer suggestions on
24 how the maps could be revised. I was presented with actually
25 not even the maps, which I did not look at physically or

1 visually inspect. I analyzed the data that was generated as
2 the result of these maps. So my task in that case was very
3 different than the task in this case.

4 Q Sure. So you were comparing partisan impact of plans versus
5 the neutral factors of a plan?

6 A Again, this is a semantic quibble, but I separated out the
7 partisan implications of the plan from things like compactness
8 and disenfranchisement and municipal splits, which were not
9 part of my partisan analysis. So that's where this language of
10 the neutral factors was in terms of how I was dividing the
11 components of my report.

12 Q That's fair enough. So you didn't go to the court and say,
13 "Whoa, hang on a second, the Democrat plans are not preferable
14 on the neutral factors, you can't adopt those because of the
15 amount of delayed voting it would cause?"

16 A On the contrary. I said very clearly that the Republican
17 maps were superior because they had lower disenfranchisement
18 numbers.

19 Q Right. But then you concluded, "I conclude that the
20 Democratic plans are marginally preferable on the neutral
21 factors."

22 A Well, there were --

23 Q Let me finish. So you lumped together all of those neutral
24 factors that you just listed, and you said on balance the
25 Democratic plans are preferable on those factors?

1 A That's what that says.

2 Q All right. So let's turn back to Page 29 for a moment. Now
3 it was possible to draw maps with less delayed voting
4 consequences, wasn't it?

5 A I'm sure it was, and that's exactly what the court did.

6 Q Okay. And, in fact, the Republicans offered three maps. If
7 we can blow that up, that would be great. Thank you. They
8 offered three maps each of which had less delayed voting
9 consequences than either of the ones that you supported?

10 A Well, I'm going to quibble with your use of the term
11 "supported." I was asked to analyze the maps, and to say that
12 I was supporting them implies that I went into this, I mean,
13 with the goal of writing reports that justified the maps.
14 That's not what I do. I analyze the maps, and if I had
15 concluded that the Republican maps were superior, I would have
16 so advised counsel. So I'm going to quibble with your use of
17 the term "supporting the map." I did not draw the maps, I had
18 no partisan stake in this fight, nor do I have one now. I see
19 my role as analyzing the facts and the data with which I'm
20 presented and rendering my opinion based on my experience and
21 knowledge.

22 Q All right. But I just want to make sure I'm clear that you
23 didn't believe that delayed voting and the amounts that were in
24 the Democratic proposed plans, you didn't believe that that
25 disqualified those maps?

1 A That was not the goal here. The goal was not to present a
2 single map and have the court rule up or down on it. The goal
3 was to compare the maps. So, you know, I did not go to counsel
4 and say, "These numbers need to be lowered because there's no
5 way I can possibly continue in this case unless those numbers
6 are lower." I performed my analysis and I said that on this
7 score the Republican maps were better.

8 Q So when you said that on the neutral factors Democratic
9 plans were marginally preferable, you understood that there
10 could be competing interests with respect to those neutral
11 factors, that they would have an interplay, one might take
12 precedence and that would be okay?

13 A Well, I mean, I don't want to go through the whole report,
14 but I also concluded that the Republican maps were egregiously
15 gerrymandered from a partisan perspective. Forty-five, 50
16 pages of the analysis deals with that fact. So, yes, there
17 were other factors that were in play, but the bulk of my
18 analysis and conclusions and testimony were about the partisan
19 implications of this, of these plans.

20 Q Mr. Mayer, do you know in 1982 there was a court-drawn map,
21 is that right?

22 A I'm aware of that.

23 Q Okay. Do you know if that had any delayed voting
24 consequences?

25 A Well, again, here you are comparing apples and oranges,

1 because I was not comparing this map against the 1982 map.

2 Q I understand. I'm sorry. I'm shifting gears.

3 A Okay.

4 Q You aware there was a 1982 court-drawn map?

5 A That's correct.

6 Q And do you know if it had any delayed voting consequences?

7 A I believe there were large numbers of people disenfranchised
8 in that map.

9 Q Do you know how many?

10 A I believe it was 550,000, roughly.

11 Q Now you don't think that the court was involved in an effort
12 to deny anybody their rights when they did that, do you?

13 A I am not able to offer any conclusions or speculate about
14 what the court was doing. As far as I know, they may have made
15 a serious effort to minimize the number of people
16 disenfranchised. I had just started graduate school at that
17 point; I was not an expert in anything. I can't really say --
18 offer any basis for comparison between the two maps.

19 Q All right. But you wouldn't suggest that they were trying
20 to deny anybody any rights?

21 A You are asking me to speculate about something that happened
22 30 years ago, but I will say that, yes, I presume that courts
23 act in good faith.

24 Q Fair enough. I'd like to turn your attention back for just
25 a moment to the topic of core retention. You are aware of the

1 recall elections that took place this past summer?

2 A That's correct.

3 Q Did your report take into account the results of those
4 recall elections on the question of core retention?

5 A No, because unlike Professor Gaddie, I made no distinction
6 between incumbent core retention and overall core retention.

7 Q Is it your position that the incumbent core retention number
8 is not something that the court needs to look at?

9 A Incumbents don't have any particular right to their seats,
10 so I don't think it's a meaningful distinction.

11 Q You are not proposing that there was any political bias
12 behind that?

13 A Again, focusing on the testimony of the map drawers in their
14 first and second depositions, they were adamant that political
15 considerations played no role in how they made decisions on the
16 map.

17 Q Now you did mention in your report that there was a
18 difference in core retention with respect to Republican seats
19 and Democratic seats?

20 A Yes.

21 Q You'll recall we talked about that a little bit at your
22 deposition. "There is a 59.1 percent core retention for an
23 average for Democrats versus an average of 68.2 percent core
24 retention for Republicans. Does that make Act 43 an invalid
25 map." Do you recall that you answered, "No, not by itself?"

1 A That's correct.

2 Q And that's still true?

3 A Yes, but it does certainly create a question in my mind,
4 taking the map drawers at their word that politics played no
5 role in it, what might explain that.

6 Q Forgive me as I page through a few of these things that we
7 can skip. Could we put up Exhibit 1128, please. All right.
8 Thank you. Dr. Mayer, what's on the screen is a table with
9 some demography information about Assembly District 8. I'm
10 wondering if you can just walk through that with me.

11 A I don't believe this is a table that I prepared.

12 Q It's not. But do you understand total population of
13 Assembly District 8 to have been 57,498?

14 A Nothing personal, Counsel, but I'm going to double-check.

15 Q By all means.

16 A Yes.

17 Q All right. And the Hispanic population in Assembly District
18 8 is 37,914?

19 A Well, again, without having a calculator in front of me to
20 verify that that is 60.54, I'm unable to do that in my head.

21 Q Sure. Can we get Table 11? What's the exhibit number for
22 Table 11?

23 A I believe that was in Professor Gaddie's report.

24 Q I believe it was one of the stipulated tables. Just one
25 moment, please. All right. Can we put up 1094.

1 MR. POLAND: Your Honor, I believe Table 11 that was
2 included in the Pretrial Report, actually there's a stipulation
3 that's extremely important. There's an important distinction
4 to make. I can read it into the record, but I would like it to
5 be on the screen when Dr. Mayer is testifying. It's that the
6 Plaintiffs stipulate to the percentages listed -- There you go.
7 It's there at the bottom. I just want to make sure that the
8 entire -- There is a caveat on the bottom. There's something
9 that we didn't stipulate to. I just wanted to make sure that
10 was displayed. Thank you.

11 BY MR. KELLY:

12 Q All right. Can we just move that over to the side just a
13 moment so we can see. So the Hispanic population as a
14 percentage is 60.52 percent, correct?

15 A That's correct.

16 Q All right. Now I can hand you a calculator or you can take
17 my word that 60.52 percent is 37,314.

18 A I just did the rough calculation in my head, and that looks
19 about right.

20 Q Okay. So then we move down to the non-Hispanic minority
21 population, and we are taking these numbers also from Table 11,
22 so we look at the 77.17 total minority versus -- minus
23 65.94 percent Hispanic population, and we come up with 11.23
24 total non-Hispanic minority. Would that be right?

25 A That appears correct.

1 Q Okay. So we take 11.23 percent of 50,498 and we get 6,457
2 non-Hispanic minority population in District 8, is that
3 correct?

4 A Okay. That number is correct, but, again, I am -- I don't
5 believe that that number is relevant in the context.

6 Q Sure, and we will get to that. And then the next line is
7 non-Hispanic White population, so we take the total population
8 minus the sum of Hispanic population in the non-Hispanic
9 minority population and come up with 13,127 non-Hispanic White
10 population. Does that look about right?

11 A Again, I dispute the relevance of that number, but the
12 number itself appears to be correctly calculated.

13 MR. POLAND: Your Honor, if I could, if we are going
14 to have this portion of Table 11 up, I'd like to make sure that
15 we have got the stipulation up on the screen, as well. If you
16 can pull that up, too, Bob. The table can be up, but I want to
17 make sure that the caveat stipulation is up, as well. Thank
18 you.

19 MR. KELLY: I understand that you don't stipulate to
20 the relevance.

21 MR. POLAND: No, but it's more than that. The
22 stipulation will speak for itself.

23 BY MR. KELLY:

24 Q Okay. All right. So let's look at the voting age
25 population. Now it shows 38,021, and that's taken from your

1 report, Dr. Mayer, Exhibit 1017 at Page 22.

2 A That number is correct. That number is correct. Okay, the
3 top two numbers are from my table, but, again, the bottom two
4 are not calculations that I performed.

5 Q Right. The non-Hispanic minority age population, if we go
6 back to Table 11, what we do is we take the non-White voting
7 age population and we subtract the Hispanic voting age
8 population and we come up with the non-Hispanic minority voting
9 age population of 10.01 percent. I understand that's not a
10 calculation you did, but that would be the correct methodology
11 to get to a non-Hispanic minority voting age population?

12 A I'm sorry. Say the second part of that again, please.

13 Q Sure. This would be a correct way for us to calculate the
14 non-Hispanic minority voting age population. You take the
15 stipulated number from Table 11, the percentages, 70.53 minus
16 60.52 --

17 A So you are talking about this number here (indicating)?

18 Q Eventually, yes, ultimately. So as a percentage we get
19 10.01 percent non-Hispanic minority voting age population, and
20 then that gives us 3,806 people.

21 A I'm just trying to see how you get 3,806 from 10.01 percent
22 from 38,021. Given that I haven't prepared this table --

23 Q The exact number is 3,805.9.

24 A It's not that. But if we're looking at that number, the
25 non-Hispanic voting age population is 10.01 percent, that ought

1 to be 10.01 percent of that number.

2 Q Right.

3 A And 10 percent of that number -- Oh, I see. Okay. I'm
4 sorry. Yes. All right.

5 Q So we are good?

6 A I had a misplaced decimal point. Yes.

7 Q So then to get to non-Hispanic White voting age population
8 you do the similar exercise that we did above, and we take the
9 total voting age population minus the sum of the Hispanic
10 voting age population plus the non-Hispanic minority voting age
11 population?

12 A Yes.

13 Q And we get 11,199?

14 A Correct.

15 Q All right. Let's put up Exhibit 1125 next to Exhibit 1128.
16 We want to keep 1125 up. You can take away Table 11. Let's
17 walk our way now through 1125. Let's blow up the first half
18 there. Now these are your calculations?

19 A This was one set of calculations that I did.

20 Q Yes. And you recall these numbers being correct, 38,021?
21 You can check them against your report.

22 A This number was updated. The 35.75 non-citizen rate for the
23 Hispanic voting age population, I updated that calculation with
24 what I considered to be the more accurate number from the
25 five-year ACS, which was 42 percent, so this calculation is not

1 the most accurate one.

2 Q Well, I understand that you have changed the numbers that
3 you are using, but I want to walk through the numbers that you
4 used in your report that you showed to us.

5 A But I have updated that based on what I presented as a more
6 accurate set of numbers. So if you want to walk through this
7 table, I'm happy to, but that number needs to be 42 percent,
8 not 35.75.

9 Q I would, because that was -- I'm assuming that when you gave
10 us your report, you gave us your best effort at the time?

11 A That's correct.

12 MR. EARLE: Your Honor, I object. The record is
13 pretty clear that in Professor Mayer's rebuttal report the
14 calculation was 42 percent based on a more accurate assessment
15 of the American Communities Survey data, and he testified at
16 length about that distinction in his direction examination.
17 It's an exercise in futility to take him through this exercise
18 with a number he's already indicated is less accurate.

19 MR. KELLY: I understand that is the Plaintiffs'
20 current position, but it was their position when they submitted
21 the report that this was accurate. We do not agree with them
22 that their updated number is the most accurate available.

23 JUDGE STADTMUELLER: Now you are talking about
24 argument, Mr. Kelly, and looking at the schedule, the argument
25 comes this evening. So in terms of taking your time, your

1 colleagues' time, the Court's time and Dr. Mayer's time, I'm
2 not sure why we're taking the time to go through this. If you
3 want to argue that his earlier report is the better report, you
4 and your clients are certainly entitled to make that argument.

5 MR. KELLY: And that certainly is part of our
6 position, is that his later report is not the most accurate.

7 JUDGE STADTMUELLER: Well, why don't we talk about
8 the later report instead of the earlier report which everybody
9 apparently now agrees is less than accurate.

10 MR. KELLY: Your Honor, we do not agree that it's
11 less than accurate. That's why we are going through this
12 report.

13 JUDGE STADTMUELLER: Okay. Well, you have made your
14 point. I'm speaking for my colleagues. It's time to move on.

15 MR. KELLY: Your Honor, are you instructing me that I
16 cannot pursue a line of questioning --

17 JUDGE STADTMUELLER: You can do whatever you want.
18 You know the Court's position. It's your case.

19 MR. KELLY: Thank you, Your Honor.

20 BY MR. KELLY:

21 Q All right. Let's look at the bottom of that exhibit. Now,
22 Dr. Mayer, when you performed your calculations to arrive at
23 the Latino citizen voting age, you adjusted it for citizenship?

24 A I adjusted the Latino population for citizenship.

25 Q You didn't adjust the rest of the population for

1 citizenship?

2 A That's correct.

3 Q So your calculations, this one and the later one, assume
4 that 100 percent of non-Hispanics are citizens eligible to
5 vote?

6 A Well, the number is so close to 100 that I felt that it
7 was -- would be clearer to simply not make that calculation,
8 because, as you note, it's less than one and one-half percent.

9 Q Um-hum. And that is a readily ascertainable number, isn't
10 it, the less than one and one-half percent?

11 A Working from the five-year table, I don't know whether
12 that's from the City of Milwaukee or statewide, but, again, if
13 that number is taken from the City of Milwaukee, this number
14 has to be taken from the City of Milwaukee, because otherwise
15 you are mixing two disparate statistics and you are not going
16 to wind up with meaningful results.

17 Q Absolutely. Let me walk through this.

18 A Well, can you indicate or represent to me whether that .0148
19 is a statewide number from 2008 or the five-year ACS for the
20 City of Milwaukee?

21 Q My understanding is that that number was taken from the same
22 source as the 35.75.

23 A Okay. It's not something that I have looked at, and that
24 may be true, but I don't know.

25 Q Okay. But let's just walk through this quickly. If the

1 project is to find out the actual percentage of --

2 A I dispute the word "actual," because we are dealing with
3 estimates here. To represent that these numbers are the
4 equivalent of census and that there is no margin of error is
5 incorrect. So these are not actual numbers, these are
6 estimates, and in this case it's not even a particularly --
7 Well, there are better ways of deriving more precise estimates.

8 Q Well, and thank you for skipping ahead to the -- and
9 answering the next set of questions. These are ballpark
10 estimates, correct?

11 A They are not ballpark estimates, they are very precise
12 estimates, but they are estimates. Ballpark presumes you are
13 guessing and you are happy to be within a significant margin of
14 error.

15 Q All right. But if we are to do the most accurate job
16 possible --

17 A You would use the 2006 to 2010 American Community Survey,
18 which has a significantly smaller standard of error than the
19 estimates, and a significantly smaller confidence level of
20 these estimates than the 2008 survey.

21 Q And continuing on the theme of being as accurate as
22 possible, we want to make sure that we are comparing apples to
23 apples, Latino citizens versus non-Latino citizens.

24 A Fair enough.

25 Q All right. So if we use those numbers in the original

1 report that you did, we actually come up with a very slight
2 Hispanic citizen voting age population majority?

3 A Which is 50.01 percent.

4 Q Um-hum.

5 A And you are asking me if I consider that to be an effective
6 citizen voting age majority in that district?

7 Q No, I'm not asking you that at all. I'm asking you is it a
8 majority.

9 A It is one one-hundredths of a percent over 50, and that
10 would almost universally be regarded as a number that ought to
11 be rounded to 50. Again, if you do the numbers on the more
12 accurate data, it's not 50.1, it would be 47 -- It goes up by
13 five-tenths of a percentage point, so it would go up to 47.57.

14 Q I understand your position. All right. So let's take a
15 look at Exhibit 1126. Now this is --

16 A Well, again, I am not allowed to raise formal objections,
17 but I object to this because this is not the right set of
18 numbers.

19 MR. EARLE: I will adopt my witness' objection, Your
20 Honor.

21 BY MR. KELLY:

22 Q Dr. Mayer, I understand your position.

23 A Well, but --

24 Q Dr. Mayer, this is based on information that you provided in
25 this case. I understand --

1 A And it's also based on information that I updated with a new
2 set of numbers that I testified under oath are more accurate.

3 Q I understand it's your position that it's more accurate.

4 A It's not my position, it's a fact.

5 Q Dr. Mayer, I understand it's your position. Now what I
6 would like to do --

7 A Well, okay, it's not my position, it's the position of the
8 U. S. Census Bureau.

9 Q Dr. Mayer, let me get this straight. Did you just pick a
10 number out of the thin blue air when you created the first
11 report?

12 A No.

13 Q You based it on what you thought was accurate?

14 A I based it on the number that I was able to derive subject
15 to the constraints that were there at the time.

16 Q All right. Now we can have a conversation later about
17 whether your current estimate is more accurate than the earlier
18 estimate, but that's a conversation I'm not having with you
19 right now.

20 A It's a conversation we ought to have right now.

21 Q Okay.

22 JUDGE STADTMUELLER: And I agree with Dr. Mayer,
23 Mr. Kelly. I indicated earlier I'm not going to stand in the
24 way of how you want to conduct your trial, but you are not
25 being very helpful to the adjudicative process. We understand

1 that Dr. Mayer had one set of data and made a report which has
2 been updated.

3 JUDGE WOOD: I just had one question about that,
4 which is what lay behind the updating, whether the new numbers
5 had been available all along and you didn't use them or whether
6 new numbers became available.

7 THE WITNESS: To answer that question, I was
8 attempting to derive the numbers on my own. In my attempt to
9 download the five-year survey onto my computer, it caused it to
10 crash because the files were very large. So as a pragmatic
11 matter I had no choice at that point but to use the one-year
12 survey. After continued investigation I discovered an easier
13 way to obtain data from the five-year survey, which was
14 actually calculated by the Census Bureau, and so once I found
15 that, I determined that that was the better number and the more
16 accurate number.

17 JUDGE DOW: The reason that's true is that it's more
18 specific to Milwaukee and also a longer duration?

19 THE WITNESS: That's correct, Your Honor, and the
20 longer duration means that you have five times as many
21 responses as you do in the one-year survey.

22 JUDGE DOW: And that reduces your rate of error as
23 you said before then?

24 THE WITNESS: That's correct.

25 BY MR. KELLY:

1 Q All right. Let's take a look at the proposed Assembly
2 District 8 that you created. That would be Exhibit 1127. Can
3 we highlight the top half, please. All right. Professor
4 Mayer, you proposed a different Assembly District 8, is that
5 correct?

6 A Well, no, that's not correct. I drew a notional district
7 that I do not represent should be the way that District 8 ought
8 to look or that District 8 should have those boundaries. I
9 drew that district with the specific intent of demonstrating
10 that it was possible to draw a district that met the equal
11 population requirements and was reasonably compact and that
12 was -- had a sufficiently high Latino citizen voting age
13 population to constitute a supermajority which I regarded as
14 necessary in order to protect the Latino community's ability to
15 elect candidates of choice. So it's not my proposed 8th
16 District, it's simply a demonstration that such a district
17 could -- such a district could be drawn.

18 Q Okay. In isolation from all of the other districts and
19 other redistricting principles?

20 A Not at all. I mean, even if you took 8 and 9 as a fixed
21 boundary, it would be possible to draw a District 8 that fit
22 within those boundaries simply by retaining the pre-Act 43
23 orientation of District 8 in the north and District 9 in the
24 south.

25 Q All right.

1 A And you wouldn't have to change any other boundaries.

2 Q Good. Let's take a look at what that would look like.

3 MR. EARLE: It was not clear to me that Professor
4 Mayer had finished his answer before you said "good."

5 MR. KELLY: Please.

6 THE WITNESS: I'm finished.

7 MR. EARLE: Oh, you are. I can't quite see with the
8 monitor in the way there. I apologize to the court.

9 BY MR. KELLY:

10 Q This table is taken from your reports, Exhibit 1017 at Pages
11 22 and 23, and your conclusion was that there was a total
12 Hispanic citizen voting age population of 60.06?

13 A Yes, I also have redone these calculations using the more
14 accurate 42 percent non-citizenship rate, and using those
15 numbers the 60.6 becomes 57.7, so it's lower than this, but
16 still clearly constitutes a supermajority.

17 Q So about a 2.3 percentage point difference?

18 A Closer to 3.

19 Q Okay. Let's look at the bottom half. Now --

20 A Again, I didn't prepare this table.

21 Q Right. Do you know what the total minority citizen voting
22 age population would be in the district that you drew?

23 A I did not calculate that.

24 Q Okay.

25 A Because in this context I don't believe it has any

1 relevance.

2 Q You don't believe it's relevant to look at the total
3 minority population?

4 A Not in the context of this district. Usually when you are
5 combining minority populations, and Dr. Grafman has written
6 extensively about this, the typical cases where that's done are
7 where you have large -- where you have minority populations --
8 two different minority populations, neither of which by
9 themselves constitutes a majority, such as a district with
10 40 percent African-American and 40 percent Hispanic voting age
11 population. At that point it's appropriate to explore whether
12 or not there's any evidence of coalitions or engagement between
13 the two communities so that their combined voting power is
14 sufficient to constitute a supermajority. It's not appropriate
15 when you have a very, you know, when you have a 65 or
16 60 percent minority population of one type and then another of
17 8 or 10.

18 In this case you are adding African-Americans, you are
19 adding -- the bulk of it is African-American, but there's also
20 2 or 3 percent Asian population in District 8, and I have seen
21 no evidence that there's any coalition building. In fact, the
22 testimony yesterday suggests that there's quite a bit of
23 tension. So I don't see this as having much relevance to the
24 question of whether the Latino community, which is the
25 community at issue here, whether under the new configuration of

1 District 8 under Act 43 maintains or protects their ability to
2 elect a candidate of choice.

3 Q All right. So I understand, your position is that there's
4 no -- that other minority groups would be unwilling to vote for
5 a Hispanic candidate?

6 A That's not what I'm saying. I'm saying there's no evidence
7 that the groups work together. It may well be that -- and I
8 did not perform a racially polarized voting analysis to attempt
9 to estimate racially polarized voting in District 8 between
10 White voters and African-American voters, because the number of
11 African-American voters are simply not sufficient to permit any
12 meaningful estimates.

13 Q All right. Dr. Mayer, let's turn to your testimony about
14 registration and turnout rates for the Hispanic community.
15 Before I do that, let's adjust that 75.6 percent at the bottom
16 for the close to 3 percent difference to account for your
17 updated numbers.

18 A Well, I can't say what it would be, because the -- when you
19 are adding populations together, you can't just subtract a
20 fixed version. You would have to redo the calculations. So I
21 don't know that you can -- You can't just simply assume that
22 you can subtract 3 percentages points from this and that's the
23 accurate answer.

24 Q Do you understand it would still be, even making that
25 adjustment, it would still be about 70 percent?

1 A I suspect it would be.

2 Q Okay. All right. So let's look at turnout. You calculated
3 I believe it was 76 percent for the non-Hispanic community and
4 26 percent registration rate for the Hispanic community?

5 A Correct, but that's not an issue of turnout, that was an
6 estimate of registration rates.

7 Q Thank you. How did you calculate those numbers?

8 A As I explained yesterday, I attained a voter registration
9 list for the City of Milwaukee and then used the technique
10 known as surname analysis to identify registered voters with
11 Latino surnames and divided that by the total number -- the
12 total voting age population in the City of Milwaukee to derive
13 the figure of 26 percent, and then I did the same for the
14 non-Latino White population.

15 Q Okay. Did you do that specifically for Assembly Districts 8
16 and 9 and the wards contained in those districts, or was that
17 city-wide?

18 A That's city-wide. I suspect, in fact, I'm quite sure that
19 the numbers specifically in those wards in 8 and 9 would be
20 even lower.

21 Q Let's take a look at the surname analysis just real quickly.
22 I believe you used what's known as the Word and Perkins Short
23 List?

24 A I'm not sure it's called "the short list," but I did use
25 what you have as Exhibit 54, the Census Technical Working Paper

1 No. 13 from March of 1996.

2 Q Do you know if this technical working paper notes at all how
3 that list of 639 Spanish surnames should be used?

4 A It's an attempt to -- It represents an attempt to devise a
5 more direct way of identifying the most likely -- the names
6 that have the highest likelihood of -- How can I explain this.
7 The list of 639 names reflects an analysis of the 1990 census
8 and the surnames in the 1990 census that are most likely to be
9 Hispanic, because in 1990 there was a data file that provided
10 actual surnames of individuals along with their
11 self-identification as Hispanic. So it reflected an effort to
12 update previous efforts to construct a surname analysis which
13 were not based on direct evidence. In particular, the list
14 that they were comparing this to was a list that was developed
15 in 1980, I believe, or in the early 80s which was a much longer
16 list, but that list was not based on any direct connection.
17 That list was based on the names on individual tax returns that
18 were filed from areas known to be heavily Hispanic, and so it's
19 a much more indirect inference than this is.

20 Q So let's turn to Page 20 of Exhibit 54. Are you there?

21 A Yes.

22 Q Okay. So this is Appendix Table A, and do you recognize
23 this as the list of the 639 most frequently occurring heavily
24 Hispanic surnames?

25 A That's correct.

1 Q Let's turn back now to Page 15, and let's look at that first
2 paragraph on the page. So this says, "A significant portion of
3 the appendix is written for persons requiring electronic access
4 to individual surname data. Consequently, persons with only a
5 causal interest in Spanish surnames can be adequately served by
6 reading Section 10.3 and browsing the contents of Appendix
7 Table A." Do you see that?

8 A Yes.

9 Q This is not a causal endeavor that we are in, is it?

10 A Well, and it also says that there are purposes for which
11 browsing the contents of the appendix will be sufficient, and
12 that's hardly what I did.

13 Q Okay. Well, let's take a look down and see what the
14 consequences might be according to the Technical Working Paper
15 of using this list. Let's go to the second paragraph from the
16 bottom. All right. "For many purposes this abridged 639
17 surname list is sufficient for making a reasonably accurate
18 assessment on the number of proportion Hispanic within a
19 group," and it gives an example. "Consider an organization of
20 100 persons. Twenty of the organization's members have
21 surnames that match the abbreviated 639 entry surname list.
22 Armed with this information, one can reasonably conclude that
23 between 20 and 30 members are Hispanic." Do you see that?

24 A Yes.

25 Q All right. So it could be 20 to 30. That 30 number is

1 50 percent higher than the 20 number, isn't it?

2 A Well, you are talking about a small population. That
3 wouldn't necessarily translate to a 50 percent difference, if
4 you were looking at a larger population. Again, there's also,
5 I'm looking for it, there's also a paragraph in here where it
6 specifically notes that the length of a surname list is not a
7 major factor in the accuracy of the inferences that you make.

8 So if I can explain this, surname analysis always produces
9 false positives and false negatives where people with Latino
10 surnames are not Latino and people with non-Latino surnames
11 are, in fact, Latino. That's been well established. I use
12 this list because of the characteristics and, again, the reason
13 that reports like this are done reflect an effort by the census
14 to update the earlier list and derive better and more feasible
15 solutions to the problem of trying to identify people.

16 Q Okay. So let's now look at 10.1.1 on this page. Just that
17 first paragraph would be fine. Thank you. All right. So
18 persons who are satisfied with the minimal number of surnames,
19 preferably on a piece of paper, and adequately cover a large
20 proportion of the Hispanic origin surnamed population within
21 the United States can use this list. So it says persons with
22 these surnames, with those surnames, represent more than
23 two-thirds of the Hispanic origin population and approximately
24 80 percent of the Spanish surnamed population. So it doesn't
25 represent the 20 percent of the Spanish surnamed population,

1 right?

2 A Well, there's no list that's going to capture everybody, and
3 the longer the list, the more likely you are to have false
4 positives.

5 Q This is saying that the 639 list would miss approximately
6 20 percent of the Spanish surnamed population?

7 A That's what that paragraph says.

8 Q Okay. All right. So let's bring up Exhibit 1099. Okay.
9 Dr. Mayer, this is -- I will represent to you this is a
10 stipulated table. It's shows the election results of Assembly
11 District 8 since 1998. What I'd like to do is take a look at
12 the names of the people who ran and check them against that 639
13 Spanish surname list and see if they are on there.

14 A Okay. Larriuz is not going to be on that list because you
15 misspelled it.

16 Q I'm sorry. Who?

17 A Victor Larriuz.

18 Q Larriuz?

19 A It's Larriuz.

20 Q Well, let's start with Pedro Colon. He's on the list,
21 right?

22 A We can check.

23 Q Sure. Let's check.

24 A He is.

25 Q All right. How about JoCasta Zamarripa?

1 A She is not.

2 Q Victor Pike?

3 A I don't believe that's a Latino surname. That wouldn't
4 appear on even the longer list, although I can't say for sure.

5 Q Can you take that piece off. I believe he's listed as being
6 Hispanic.

7 A That's true, but that's because that would be a case of a
8 false negative.

9 Q So he's one person that that list would miss?

10 A No, it would be -- I mean, just by looking at it I would
11 suspect that that name is likely European, so, you know, if
12 we -- I examined the voter registration list -- well, I
13 won't -- I'm not sure how that -- from the 1990 census, 2000
14 census, which also included information. There are a number of
15 names on that list that are held -- that are held by people who
16 are listed as Hispanic that are quite obviously non-Hispanic.
17 So, again, there's no list that's perfect.

18 I'd also say this only constituted a very small piece of my
19 analysis, which was simply that registration study, nothing
20 regarded to turnout or election results or racially polarized
21 voting had anything to do with the use of the surname analysis.
22 In reading this report there is a section in here, I can't find
23 it, I'm not quite sure why, where they explicitly state that
24 the length of a surname list is not going to be a major factor,
25 and whether or not the inferences that you draw are going to be

1 any more accurate.

2 Q Well, the people that wrote the list, they said there might
3 be a difference of 50 percent, the number that it actually
4 reflects?

5 A Well, that's if you are talking about a population of 20,
6 and, yes, it is not a foolproof method.

7 Q We really can't have any confidence in that 26 percent
8 number as being accurate?

9 A I disagree. I think that number might need to be adjusted,
10 and even if we adjust it by, you know, 10 or 20 percent, it's
11 not off by 50 percent. There aren't that many people in the
12 community in the City of Milwaukee, and I should also note that
13 the longer list of 12,00 names that was the prior list, that
14 was developed in order to study Latino populations in the
15 southwest when you are talking about populations of tens of
16 millions of people. It really was not developed and I don't
17 believe was intended to be use used for smaller populations.

18 In my view, this list is more than sufficient to draw
19 inferences about a small population. Again, we're talking
20 about a voting age population of approximately 77,000
21 individuals. So, yes, they are going to be infrequently
22 occurring surnames that are not on this list, but it's not like
23 there are 8,000 people in Milwaukee whose last name is
24 Zamarripa.

25 Q Okay. Let's do this, just in the interest of time. I will

1 represent to you, even accounting for your representation of
2 Victor Larriuz's name is misspelled, I will represent to you
3 that 6 of the 11 people that ran in Assembly District 8 don't
4 show up on the 639-name list.

5 A In 2008?

6 Q Since 1998.

7 A Of the people who are listed as Hispanic?

8 Q Yes.

9 A Can we blow up Table 16, make it larger? Goodson is clearly
10 a non-Hispanic name. That's not going to show up. Well --

11 Q I will tell you the ones that --

12 A If they are not on the list, they are not on the list. I'm
13 not going to argue with you there. Again, the surname analysis
14 played only a very, very small role in my overall assessment of
15 participation. It's just one piece of a much larger puzzle.

16 Q Since that was a small piece of your analysis, let's move on
17 to talking a little bit about Gingles. Can you tell me what
18 the three Gingles prongs are?

19 A I can tell you my understanding of them as a social
20 scientist.

21 Q Sure.

22 A The three prongs of the Gingles test which flushed out the
23 practical requirements of the 1982 amendments to the Voting
24 Rights Act establishes three conditions for a finding of the
25 applicability of Section 2. The first is the -- is a minority

1 or protected class of voters must constitute a sufficiently
2 large and geographically compact community so that it is
3 feasible to -- so it's feasible to contain it or to place it
4 into a district where it constitutes a majority.

5 The second is that that group must show evidence of
6 political cohesiveness, and the third is that there must be
7 evidence of racially polarized voting so that the voting of
8 non-minority voters is sufficient to deny the minority or
9 protected class of voters the opportunity to elect their
10 candidates of choice.

11 Q All right. Let's focus for a moment on that second prong,
12 this idea of cohesiveness. To figure out the cohesiveness we
13 look at that community's voting behavior, yes?

14 A That's one piece of it, yes.

15 Q And the behavior that we are looking for there is evidence
16 that they will, on a more than 50-percent basis, prefer a
17 Hispanic candidate or a non-Hispanic candidate.

18 A Well, again, that's only one piece of a much more detailed
19 analysis.

20 Q It's an important piece, isn't it?

21 A It is.

22 Q Let's bring up Exhibits 1025 and 1017. All right. And
23 let's go to Table 7 in Exhibit 1017. It's near the end. It's
24 about five pages from the end of that exhibit. All right.
25 Dr. Mayer, Exhibit 7 as it's on the screen, that's part of a

1 racial polarization analysis that you did to analyze voting
2 behavior in Assembly Districts 8 and 9, is that right?

3 A No, that's incorrect. This was the first table that I did,
4 which examines voting among Latino and White voters in
5 Milwaukee County.

6 Q The whole of Milwaukee County?

7 A That's correct.

8 Q Not just 8 and 9?

9 A Although the weight of those results, given how the Latino
10 community is concentrated, I believe it's approximately
11 two-thirds, perhaps a little bit more, but, yes, this was for
12 voting in Milwaukee County.

13 Q Okay. Can we blow up the first three columns on
14 Exhibit 1025 in the upper third and over to the right?

15 A Here, Counsel, you are comparing apples and oranges, because
16 the second table was something that I produced in response to
17 the criticisms that Professor Gaddie made. So these numbers
18 are not going to be the same as those appearing in Exhibit 7.

19 Q Sure. First I just want to ask you what it is. So
20 Exhibit 1025 is a racial polarization analysis looking at most
21 of the same races as on Exhibit 7, but focusing simply on the
22 results of those races in 8 and 9, is that right?

23 A That's correct.

24 Q All right. Can we capture one more column on Exhibit 1025.

25 A little bit further over. Actually, we have to turn to the

1 second page of 1025. Now this is a little bit difficult to
2 look at on the screen, but you can look at the hard copies.
3 The list of races there are the same as on Exhibit 7 except for
4 the -- except for the state senate district -- 2004 State
5 Senate District 8 race, correct? You didn't use that on
6 Exhibit 1025?

7 A I'm sorry. Say that again.

8 Q On Exhibit 7 the last race you have on there is the 2004
9 State Senate District 8 race?

10 A That's correct.

11 Q And that's not on Exhibit 1025?

12 A That's correct.

13 Q The bottom race on Exhibit 1025 is the city aldermanic race?

14 A That's correct.

15 Q So what I'd like to do is compare a couple of numbers, and
16 perhaps you can explain to me how they differ. In particular,
17 the Rose Fernandez races. You show percentage Latino voting
18 age voting for a Latino candidate as being 93.5 and 95.7
19 respectively for those two races?

20 A That's correct.

21 Q And looking just at Assembly Districts 8 and 9, how do those
22 numbers compare to the performance there?

23 A These numbers are lower.

24 Q Why is that?

25 A Well, it's in large part because we're looking at different

1 data. The last column of Exhibit 7 shows that we are talking
2 about -- we're dealing with over 450 wards, and that additional
3 data allows you to get much better estimates, and in these
4 races I believe the number of wards was typically on the order
5 of 40 or 50, so that's going to produce estimates with larger
6 errors. So that's the first difference.

7 Q Let's talk about the difference between looking at
8 county-wide results versus in 8 and 9. I believe that you
9 testified earlier that the best evidence --

10 MR. EARLE: Your Honor, may I object. The parties
11 had agreed on a schedule, pursuant to the Court's request, for
12 dividing up the time today, and in light of Mr. Kelly's
13 disregard of the Court's admonition to how he should use his
14 time, we have now reached 10:00 o'clock and we are actually
15 past 10:00 o'clock, and the cross of Dr. Mayer, Professor
16 Mayer, was supposed to end at 10:00 o'clock. A half-hour has
17 been allocated to the plaintiff for redirect prior to the
18 break, and so I would object at this point to further
19 examination under these circumstances.

20 MS. LAZAR: Your Honor, I would address that and say
21 as being the one who drafted the outline for last night, we
22 started, because of Mr. Poland's discussion this morning, at
23 8:40, so it would be until 10:10, and we agreed yesterday that
24 these were not firm and tight, we should be close to them, but
25 there is still about ten minutes left.

1 JUDGE STADTMUELLER: Well, I think, with all due
2 respect, we do need to stay on a locked-in schedule for the
3 rest of today. Both all of you and the court and the court
4 staff and building security and utilities have all been
5 consulted about this, and so literally everyone associated with
6 this case is going to be out of the building by 9:30. There
7 are travel arrangements for my colleagues and their staff and
8 the building custodians and the utilities. So how you all want
9 to use the balance of your time today, whether there may be
10 further stipulations or whatever, the doors close at 9:30. Be
11 guided accordingly.

12 MR. KELLY: Thank you, Your Honor.

13 BY MR. KELLY:

14 Q In the interest of moving this along, what I'd like to do is
15 take a look at -- Focusing our attention on Exhibit 1025, that
16 first race is the county supervisor race, is that right?

17 A I believe so. Is there a paper copy of this that I can
18 refer to?

19 Q Exhibit 1025. It's in your binder there.

20 A Thank you.

21 Q So what we have here is Daniel Cortez versus Peggy West and
22 Laurie King, right?

23 A Yes, and I removed this from further analysis upon
24 discovering that Peggy West was, in fact, Latina.

25 Q So we take out those two races, is that correct?

1 A Right.

2 Q Okay. So now we move down to the third, state
3 superintendent with Ms. Fernandez?

4 A Yes.

5 Q All right. Before we go any further, I just want to make
6 sure I understand what our project here is about. Our project
7 is to try and figure out if the Hispanic community in Assembly
8 Districts 8 and 9 are cohesive in the way they vote for other
9 Hispanics, right?

10 A Well, and also, Counsel, this includes populations in
11 District 9, so this is not limited to District 8. It includes
12 the much lower percent of Latino voting age population in
13 Assembly District 9 as created in Act 43.

14 Q Okay. With that in mind, let's look at the King's
15 Ecological Inference result that you calculated that shows that
16 49.8 percent of the Hispanic population voted for
17 Ms. Fernandez.

18 A That's correct.

19 Q Okay. That's below 50 percent just a little bit, but it's
20 below 50 percent?

21 A That's correct.

22 Q All right. So according to that number it doesn't look like
23 Ms. Fernandez was the Latino community's candidate of choice.

24 A Well, based on this estimate, which, again, is based on a
25 particular set of data that includes Latino and non-Latino

1 White voters in areas that are in District 8 and also areas
2 that are in District 9. The estimate is, yes, she got
3 49.8 percent of the vote in the primary.

4 Q And I'm glad you mentioned that this is an estimate, because
5 let's look at the next one. This is also with Ms. Fernandez,
6 correct?

7 A That's the general.

8 Q And that's the general. And that shows in Assembly
9 Districts 8 and 9 that she received 50.5 percent of the
10 Hispanic vote?

11 A That's the estimate, yes.

12 Q Okay. So that calculated number there is just slightly
13 above 50 percent?

14 A That's correct.

15 Q Okay. Now we have got these parenthetical numbers that
16 follow that. Can you tell me what those are?

17 A Those are the 95 percent confidence intervals which are --
18 specify the range in which the true value of that number will
19 fall 95 percent of the time.

20 Q Okay. Let's look at the next two races, and those were the
21 ones in which Pedro Colon ran for Circuit Court judge, is that
22 right?

23 A That's correct.

24 Q All right. Now that shows that he was the Hispanic
25 community candidate of choice to the extent of 54.8 percent,

1 right? Am I reading that right?

2 A That's correct.

3 Q And then that was the primary, and then in the general 64.4?

4 A Right.

5 Q Now Judge Colon won both of those races?

6 A That's correct.

7 Q Okay. So in those two instances there certainly wasn't --
8 the non-Hispanic community didn't vote in such a way that they
9 were able to prevent him from winning those races, right?

10 A Although it is true that in the City of Milwaukee the race
11 was very, very close, and that he won -- Actually, he won a
12 very large percentage of the vote in the City of Milwaukee and
13 performed much more poorly in the areas outside of the City of
14 Milwaukee, but still inside the county.

15 Q Okay. What we are interested in then is his 8 and 9. The
16 project here is to see if Assembly Districts 8 and 9, Assembly
17 District 8 in particular, will be able to elect the Hispanic
18 community's candidate of choice.

19 A Okay. Yes.

20 Q And in this case they did, Judge Colon won.

21 A That's true, but, again, this racially polarized voting
22 analysis is only one piece of the larger puzzle. One must take
23 into account turnout, and if you look at the bottom of the
24 table which shows the estimates of the racially polarized
25 voting, when we were dealing with the citizens adjusted Latino

1 voting age percentage, you will see that all these numbers get
2 larger.

3 Q All right. But he won?

4 A The Circuit Court race, yes, he did, but he lost in
5 Districts 8 and 9 in the 2008 city attorney race.

6 Q Right. So there's no guarantees in life, but he can
7 certainly win in Assembly Districts 8 and 9 certainly when he
8 runs for judge?

9 A I would have to look at the overall -- the actual vote
10 totals which would be more -- The thing is, this estimates a
11 particular quantity, or two particular quantities, which is the
12 percentage of Latinos and Whites who are estimated to vote for
13 the Latino candidate. It doesn't tell you with any certainty
14 who won. There's no need to rely on this to tell you who won.
15 You can go and actually look at the vote to determine that.

16 Q Right. I just want to make sure that we are looking at
17 races that indicate whether the Latino community can elect a
18 candidate of choice.

19 A No, that is not what this is saying. This is an estimate of
20 the percentage of Latino or White voters who vote for the
21 Latinos' candidate. The only thing that this does is establish
22 whether or not there were patterns of racially polarized
23 voting, and it doesn't exhaust the task of determining whether
24 these numbers are sufficient to deny a community the
25 opportunity to elect a candidate of choice. That requires

1 further analysis of the sort that I provided yesterday morning
2 about turnout and adding to the population. I mean, the best
3 evidence of what will happen in Assembly District 8 comes from
4 the analysis of the 2008 city attorney race between, at that
5 point, Representative Colon and City Attorney Langley, which
6 shows that in those areas Pedro Colon lost that race. And,
7 yes, he won in the areas constituting the old 8th District
8 under the 2002 district, but he lost in the new areas of the
9 8th that were added to that, and overall he lost.

10 Q And, yes, I understand that that is your analysis of that
11 race. But this is a different race and he won. Now what I
12 want to do is circle back real briefly to your discussion of
13 these confidence intervals here. So what you are saying is
14 that 95 percent of the time the actual value will fall within
15 that range?

16 A Right, but it's not an equal probability at every point in
17 that range. The confidence intervals are expressed as
18 probabilities with essentially a normal shaped bell curve. So
19 the actual quantity -- The estimate of that percentage, the
20 first number, is the most likely outcome, and as you move out
21 you have a nice -- I will draw it here. You have a nice
22 bell-shaped curve, and this is where the point estimate is, but
23 an estimate out here, which is the 95 percent confidence
24 interval, basically extends to the area of the curve that has
25 the area of 95 percent, but it's not true that a value here is

1 as likely to occur as a value there (indicating).

2 Q Okay. But what I want to make sure that I understand is
3 that in five of the races, five of the seven races you listed
4 here, that confidence interval extends below 50 percent?

5 A Yes, but that does not mean that a number below 50 percent
6 is as likely to occur as a number above 50 percent.

7 MR. KELLY: I understand. If I might confer with my
8 colleagues a quick moment, I think we are just about done.

9 BY MR. KELLY:

10 Q All right. Dr. Mayer, just a few things and I think we will
11 be able to close up shop on this. When we are looking at
12 whether the Latino community can elect a candidate of their
13 choice, we look at what happens when a Hispanic runs, we look
14 at how the Hispanic community reacts to the candidacy of that
15 individual, we look at the action of the non-Hispanic community
16 to that individual, basically speaking, right?

17 A In rough outline, that's correct.

18 Q Okay. So in Assembly District 8 as it is configured, if an
19 Hispanic wins the Democratic primary, is he going to lose the
20 general election?

21 A Probably not, because this is -- Milwaukee is a very
22 Democratic city.

23 Q So what we're -- the race that is really going to be
24 important is the primary?

25 A I would say yes, that the candidate who wins the primary

1 is -- the Democratic who wins the primary is very likely to win
2 the general.

3 Q Okay. Now your Table 7, Exhibit 7 to your report, that does
4 not look at or it doesn't tell you what the results of a
5 Democratic primary is going to be in Assembly District 8?

6 A That's correct.

7 Q Okay. And then when we are looking at Exhibit 1025, that
8 doesn't tell us what the result of a Democratic primary in
9 Assembly District 8 would be?

10 A That's correct.

11 Q All right. That's what we need to know? We need to know
12 who's going to win the primary?

13 A That's one piece of information you need to know. There are
14 elections in the new area of Act 43 where the Hispanic
15 candidate lost.

16 Q But we are concentrating on whether Assembly District 8 can
17 elect a Hispanic representative to the State Legislature.

18 JUDGE WOOD: Are we talking about the new one or the
19 old one? I just want to make sure I understand.

20 MR. KELLY: The new one.

21 BY MR. KELLY:

22 Q All right. So would it be fair to conclude that if a Latino
23 candidate won the Democratic primary for the Assembly District
24 8 seat, the likelihood is that candidate is going to go on to
25 win the general election?

1 A That's correct.

2 Q Okay. So what we need to figure out is whether a Hispanic
3 candidate is likely able to win the Democratic primary in
4 Assembly District 8?

5 A Yes.

6 Q And Exhibit 7 and Exhibit 1025 don't tell us if that's
7 possible?

8 A That's correct. They weren't designed to answer that
9 question.

10 MR. KELLY: Okay. One further moment, please. No
11 further questions at this time. Thank you, Dr. Mayer.

12 MR. EARLE: Your Honors, we're 20 minutes into the
13 time that we had allocated amongst ourselves for the
14 Plaintiffs' redirect. In agreement with counsel, I will, in an
15 effort to get us back on course, keep this as narrow and
16 focused as possible and see if we can get back on schedule.

17 REDIRECT EXAMINATION

18 BY MR. EARLE:

19 Q Earlier, Professor Mayer, you were searching for a paragraph
20 in exhibit -- I think it was the short list -- 54?

21 A That's correct.

22 Q And you were unable to find that in order to explain to the
23 court the question that was before you. If you look to Page 13
24 under the caption "Conclusion" and look at the last paragraph
25 of that, is that the paragraph you were looking for?

1 A Not completely. There was a specific reference to the
2 length of a surname list that --

3 Q Does this paragraph address the question that you were
4 discussing regarding false positives and negatives as you add
5 more names to the list?

6 A Yes, it says that the longer the surname list is, the more
7 likely you are going to have false positives and false
8 negatives.

9 Q Okay. Thank you. Is there anything more you want to
10 explain about that?

11 A Well, that's just -- Again, the problem is the examples they
12 use in this report is that Smith is an, obviously,
13 non-Hispanic, non-Latino surname, but there are a lot of
14 people -- a lot. There are certainly a non-zero number of
15 people with the last name of Smith or Brown who do identify as
16 Latino, just as there are individuals with the last name
17 Martinez or Hernandez or Garcia who identify as non-Hispanic.
18 So there's no -- this is not -- no matter how long or short the
19 list, you are never going to attain 100 percent accuracy.

20 Q I think we might have found your page. How about Page 11.

21 A Yes, this is it.

22 Q Okay. Thanks.

23 A At the bottom of Page 11 it indicates some of the
24 differences between the 1980 list which has over 12,000 names,
25 and it says that the database used in assembling the 1980 list

1 consisted of 80 million observations. This sample uses only
2 1.8 million records. In any case, the length or number of
3 names of a surname list has little correlation to its
4 effectiveness.

5 Q Thank you. And then you were asked other questions about
6 the decision to -- I'm switching now over to the American
7 Communities Survey and the decision to go from the single-year
8 2008 analysis to the five-year 2006 to 2010 data for Milwaukee
9 County.

10 A Milwaukee city.

11 Q Milwaukee city. What was the date of your rebuttal report?
12 That would be Exhibit 60.

13 A January 13th.

14 Q Okay. Do you recall the date of your deposition?

15 A January 27th.

16 Q Okay. So you updated the data prior to your deposition,
17 isn't that correct?

18 A Yes, as far as the table about the racial polarization
19 analysis in 8 and 9, but the correction or the updating to the
20 more accurate 42 percent non-citizenship rate I had done prior
21 to my rebuttal report.

22 Q Okay. Professor Mayer, you are familiar with the first
23 prong of Gingles, correct?

24 A That's correct.

25 Q Does Act 43 Assembly District 9 satisfy the first prong?

1 A No.

2 MR. EARLE: No further questions, Your Honor.

3 MR. KELLY: Just -- Oh, I'm sorry.

4 REDIRECT EXAMINATION

5 BY MR. POLAND:

6 Q A switch of topics here, Dr. Mayer. Going back to your
7 testimony yesterday, do you recall that Mr. Kelly asked you
8 yesterday about the overall population deviation in assembly
9 districts under Act 43?

10 A Yes, I do.

11 Q Do you recall what the population deviation is?

12 A I believe it was less than 1 percent.

13 Q Is that an acceptable population deviation considered in
14 conjunction with the traditional redistricting criteria you
15 examined?

16 A Well, it's more complicated than that. When I answered that
17 question, I was responding solely to whether I thought that
18 population deviation was within permissible bounds, but that
19 judgment doesn't occur in isolation. No matter how small the
20 population deviation is, as long as it's not exactly zero,
21 there is still an obligation to comply with further
22 redistricting criteria and other statutory and constitutional
23 and jurisprudential requirements. So just noting that the
24 population deviation by itself is less than 1 percent and
25 doesn't appear to exceed any threshold that triggers a much

1 higher degree of scrutiny, that doesn't exhaust the analysis.
2 You don't stop there and say, "We're done; everything else is
3 fine. It doesn't matter what the plan looks like."

4 Q And you have examined the traditional redistricting criteria
5 that you testified to in this proceeding, is that correct?

6 A That's correct.

7 Q Is it correct that it's your opinion that the population
8 deviations are not justified under the traditional
9 redistricting criteria that is in Act 43?

10 A Subject to the problems that I noted, the fact that the
11 population deviations are small, doesn't free the map drawers
12 to do whatever they want.

13 MR. POLAND: Thank you. No further questions.

14 RECROSS EXAMINATION

15 BY MR. KELLY:

16 Q Dr. Mayer, just so I understand this completely, you have
17 not prepared or produced a racial polarization analysis that
18 would show us how the Latino candidate would fare in the
19 Democratic primary in Assembly District 8?

20 A It's not possible to do that kind of analysis, because one
21 can only perform that analysis when you have one Latino
22 candidate and one non-Latino candidate. It's also important
23 that the non-Latino candidate in that context get more than a
24 trivial amount of votes.

25 Q So you don't have an opinion on how a Latino candidate in

1 Assembly District 8 would fare in the Democratic primary?

2 A I do based on the actual election results that have occurred
3 in the area of the Act 43 Assembly District 9 -- District 8,
4 I'm sorry -- with respect to the differences and the
5 performance of what -- of the candidate who was actually the
6 incumbent of District 8, how he fared in the areas of the
7 previous District 8 and how he did in the new areas. Here you
8 had a race involving the incumbent for District 8 who loses an
9 election to a non-Latino candidate in those areas. That
10 strikes me as quite significant.

11 Q Okay. But that was not a partisan primary race in Assembly
12 District 8?

13 A That's correct.

14 MR. KELLY: Okay. Thank you.

15 JUDGE STADTMUELLER: All right. Thank you,
16 Dr. Mayer. You may step down. You are excused. At this time
17 we will take our morning break and we will reconvene at 10:45.

18 THE BAILIFF: All rise.

19 (A recess was taken.)

20 THE BAILIFF: All rise. The court is now in session.
21 The Honorable Judges J. P. Stadtmueller, Diane P. Wood and
22 Robert M. Dow, Jr., presiding. Please be seated and come to
23 order.

24 JUDGE STADTMUELLER: Call your next witness, please.

25 MR. POLAND: Your Honor, at this time the Baldus

1 Plaintiffs are going to rest our case. Before we do, we have
2 some things that we need to do. First of all, it's my
3 understanding in conferring with the Court's clerk that we will
4 be moving all of our exhibits into evidence en masse, so to
5 speak. I believe we have reached an agreement that we will do
6 that based on the agreement that exhibits used with witnesses
7 are going to be moved into evidence. In addition, any exhibits
8 that are used in depositions that have been designated, we
9 would move those exhibits, as well. So we would move those
10 into evidence at this time, your Honor.

11 In addition, there is deposition testimony that we
12 have designated, as well, and we would tender that to the
13 Court, as well, in the Baldus case in chief. We have two
14 exceptions. One is that we just received Mr. Troupis'
15 testimony yesterday. We are still in the process of
16 designating that testimony. With the Court's leave, we will be
17 able to submit that before the end of the day today so the
18 Court will have it. It simply will not be in the Court's
19 possession until the end of the day.

20 JUDGE STADTMUELLER: For purposes of housekeeping
21 with regards to the witness' deposition transcripts that are
22 going to be substituted in lieu of actual testimony, I want you
23 to make an actual record in front of the court reporter,
24 whether providing a list or a stipulation or a designation,
25 because as you are aware, there have been a lot of items filed

1 either as part of the pretrial report or successively. There
2 are few of these exhibits that counsel have found some errors
3 in and have asked Mr. Willenbrink to substitute corrections.
4 So you and your colleagues and Mr. Willenbrink, with the aid of
5 the court reporter, need to make a record on all of this,
6 because the last thing the Court wants to encounter is a
7 dispute later as to what iteration of either a transcript or an
8 exhibit is actually part of the official record of the trial.

9 MR. POLAND: If I'm understanding Your Honor
10 correctly, you'd like the specific numbers and the specifics
11 names of the components?

12 JUDGE STADTMUELLER: Correct.

13 MR. POLAND: We can do that. We will work on it over
14 lunch and we'll do that before the end of the day. We will
15 make sure we make that record. The other caveat that I have is
16 on the deposition designations. Ms. Lazar and I have agreed
17 that Dr. Morrison's report will be submitted, as well, as an
18 exhibit. We may have a couple of things to do on
19 cross-examination, but we'll submit essentially
20 cross-examination based on the cross at deposition.

21 MR. SHRINER: Your Honor, this may be a good time, if
22 I may. Mr. Hassett and I have agreed and stipulated and the
23 principal defendants also agreed that the record on the Act 44
24 claims made by -- now only by the intervening plaintiffs may be
25 what is set forth in the stipulation, and we're going to e-file

1 it, but I have copies for the clerk. There are also exhibits
2 attached to that, new exhibits, and so I would move the
3 admission into evidence of all of the matters referred to in
4 the stipulation.

5 JUDGE STADTMUELLER: All right. Implicit in that,
6 Mr. Shriner, is that other counsel received a copy?

7 MR. SHRINER: Yes.

8 JUDGE STADTMUELLER: Thank you. The Court will
9 receive the stipulation.

10 MR. EARLE: Your Honor, on behalf of the Voces de La
11 Frontera Plaintiffs I'd like to make a mirror motion with
12 regards to receipt of exhibits to that of Mr. Poland. I won't
13 go into much detail, but with regards to all the exhibits
14 relative to -- that were presented through the testimony of my
15 examinations.

16 JUDGE STADTMUELLER: With the same understanding that
17 I reached with Mr. Poland and Ms. Lazar, that request will be
18 granted. Again, you need to review them with opposing counsel
19 and Mr. Willenbrink at the appropriate time. We may now
20 proceed.

21 MS. LAZAR: Thank, Your Honor. We call to the stand
22 Dr. Peter Morrison.

23 PETER MORRISON, having been first duly sworn, was
24 examined and testified as follows:

25 MS. LAZAR: Good morning, Dr. Morrison.

1 THE CLERK: Dr. Morrison, would you state and spell
2 your full name for the court reporter.

3 THE WITNESS: Peter A. Morrison. That's P-E-T-E-R,
4 middle initial A, M-O-R-R-I-S-O-N.

5 MS. LAZAR: Your Honors, in the interest of moving
6 this matter along, counsel for Plaintiffs and Defendants have
7 agreed that we're going to do sort of an expedited examination
8 of Dr. Morrison, and in that regard we would refer the Court to
9 the more detailed CV and the information that's entailed in his
10 report.

11 DIRECT EXAMINATION

12 BY MS. LAZAR:

13 Q I would ask you, Dr. Morrison, if you can give me maybe a
14 minute summary of your expertise in the area of demography.

15 A Sure. I characterize myself as an applied demographer.
16 That is someone who uses demographic techniques and data to
17 address concrete questions rather than pressing forward the
18 frontiers of knowledge. My professional experience, briefly,
19 is I was on the faculty of the University of Pennsylvania as an
20 assistant professor affiliated with the Population Study Center
21 there for two years. I then went to the Rand Corporation from
22 1969 through about 1995 or so where I was a staff demographer.
23 Then I was promoted to a senior staff demographer, and I also
24 was the founding director of Rand's Population Research Center,
25 which is the only NIH-funded research center outside of an

1 academic setting.

2 I have published extensively on a variety of applied
3 demographic topics with a substantial number of publications in
4 peer-reviewed journals concerning technical aspects of
5 measuring minority presence in particular neighborhoods of
6 cities, changes in minority share of the population. I have
7 also published extensively about the applications of technical
8 demographic analysis to redistricting and addressing issues
9 that arise before the court in voting rights cases.

10 I have served on a number of professional committees, the U.
11 S. Census Bureau's working group on 2010 race ethnicity. I
12 also was a member of and chaired their advisory committee on
13 population statistics. I have worked also with the -- I have
14 been on review committees of the National Institutes of Health
15 and the National Science Foundation.

16 In terms of my professional field, I have held elected
17 office in the two principal professional associations of
18 demographers, Population Association of America where I have
19 been elected to the board of directors, and the Southern
20 Demographer Association where I was elected to the board of
21 directors and also as president of the association.

22 Q Okay. Thank you. In this case, Dr. Morrison, were you
23 retained on behalf of counsel for the Defendants?

24 A Yes, I was.

25 Q And you were retained to undertake a demographic analysis of

1 the Latino population growth in Wisconsin, specifically
2 Milwaukee County?

3 A Yes.

4 Q And in that regard did you submit an expert report?

5 A Yes, I did. I submitted two expert reports. One was my
6 declaration and expert report dated December 14th, and the
7 second one was a rebuttal report.

8 Q Thank you. If you could pull up Trial Exhibit 32, and in
9 front of you, Dr. Morrison, is Exhibit 32. Is that a copy of
10 your expert report that was dated December 14th?

11 A Yes.

12 Q And in that expert report you list the information that you
13 base your report on, which we will not go into today, but on
14 Page 12 of your report you reach four conclusions, is that
15 correct?

16 A That's correct.

17 Q Can you quickly summarize what those conclusions are?

18 A Yes. Since 2000, and I'm referring here to 2000 census data
19 compared with 2010 census data, since 2000 Hispanics numbers
20 have increased in the State of Wisconsin, a slowly growing
21 state, and much of that growth has occurred within Milwaukee
22 County. It is apparent that there is a well defined Hispanic
23 residential enclave that consists of various communities that
24 together are increasingly gaining Hispanic population both
25 through the influx of Hispanics into the state, and

1 specifically into the county, and also through the maturation
2 and growth of the Hispanic population as a predominantly
3 youthful Hispanic population ages into the voting ages and
4 thereby buttresses Hispanics' presence among potential voters.
5 That's the crux of what I found.

6 Q Okay. And was that opinion made to a reasonable degree of
7 certainty to the best of your scientific knowledge and
8 expertise?

9 A Yes.

10 Q We're going to go through a few points, not detailing most
11 of your report. Just a preliminary comment. You heard
12 Professor Mayer this morning discussing the American Community
13 Survey and the fact that that data regarding citizenship is not
14 included in the 2010 census. Can you give me a few -- There
15 was also some reference to whether or not these were ballpark
16 figures. Could you elaborate on that point?

17 A Well, I think he's correct in stating that they are not
18 ballpark figures, they are the best available estimates of
19 Hispanics -- of the Hispanic share of the citizen voting age
20 population. One can think of them as being measured in several
21 ways. The American Community Survey is a national -- you can
22 think of it as a national miniature census that is conducted
23 annually. There's an ACS survey that was conducted in 2006,
24 2007, et cetera, et cetera. The latest one was in 2010.

25 The number of interviews conducted nationwide is so small

1 that it does not give a very precise estimate of anything down
2 to much smaller than a city level or a county level. What
3 Dr. Mayer has used is an aggregation of five years of data.
4 That is to say, imagine you took a survey every year, added all
5 the interviews together covering a period of 2006 to 2010 and
6 that gave you a measure that told you about the population
7 during the period 2006 to 2010. It's not a measure as of 2010
8 or as of 2006 or as of the midpoint 2008, it is during that
9 period. That's as precise a statement as you can make. If you
10 want the latest data, you would want 2010.

11 Q Okay. Going to one of your conclusions, you have a
12 conclusion that deals with the fact that the Latino or Hispanic
13 voting age population is likely to increase in the next decade.
14 Can you explain why that is?

15 A Well, there are two demographic processes that are underway
16 that are the basis for my reaching that conclusion. The first
17 is there is clear-cut evidence that Hispanics are moving into
18 the state, and specifically into the county, and also within
19 the county Hispanics are moving locally. They are
20 redistributing themselves within the county and in a sense
21 gravitating toward the Hispanic enclave. So one process
22 underway is Hispanics moving about. No one can predict that
23 with 100 percent certainty into the future. That could stop,
24 it could change.

25 There's a second process that's underway that is built into

1 the populations structure, and that has to do with Hispanics'
2 disproportionate concentration in the youthful ages, that is to
3 say, underage 18. If you look at the Hispanic population -- If
4 you look at the under 18 population as a whole, Hispanics
5 within Milwaukee County constitute approximately 7 out of every
6 10 persons under 18. In addition, the vast majority, virtually
7 all of the Hispanics under 18, are citizens. So with each
8 passing year, 1/18th of that predominantly Hispanic population
9 ages forward, enters the voting age as citizens and strengthens
10 Hispanics' concentration among persons who are eligible to
11 vote.

12 At the same time, if you look at the population 65 and
13 older, the majority of those persons are non-Hispanics. These
14 are people who are passing through the ages of increasing
15 mortality and will, over a period of time, gradually die off.
16 So you have a process whereby people are being added to the
17 voting age population who are mostly Hispanic, and people who
18 are -- people are being subtracted from the voting age
19 population who are mostly non-Hispanic. This process is built
20 into the population's structure, and it virtually guarantees
21 that Hispanics will inextricably increase as a share of
22 eligible voters.

23 I have done some estimates of the rate at which this change
24 with occur, and the easy way to think about it is the Hispanic
25 share of registered voters, I should say the Hispanic share of

1 the citizen voting age population over time within Assembly
2 Districts 8 and 9 will increase approximately 1 percent per
3 year going forward, and that is virtually guaranteed by
4 population structure, even if people stopped moving into the
5 county.

6 Q Okay. If the consultant can turn to exhibit -- Keep up
7 Trial Exhibit 32, but also pull up Trial Exhibit 1191. Oh,
8 it's really hard to see. I was going to say if you could bring
9 up the legend from that, but I don't think it's going to be on
10 any help.

11 A I think I can help you here by just explaining --

12 Q Yes, ignore that. Dr. Morrison, if you can explain what
13 Exhibit 1191 is.

14 A Yes, this is a map showing in color the degree of Hispanic
15 population change by census tracts between 2000 and 2010. So
16 it's a picture of where the sheer numbers of Hispanics are
17 increasing. The deepest shade of green corresponds to those
18 census tracts in which the number of Hispanics gained over that
19 ten-year period exceeded 1,000. So you can see there is a
20 broad block of territory here deep green, and in each of those
21 boxes with a number in it that, represents more than a thousand
22 increase in Hispanics. There's another one over here
23 (indicating). These two things that I have circled are the
24 cores of the Hispanic -- of the growing part of this Hispanic
25 enclave. The lesser shades of green are areas in which growth

1 is between 250 and 1,000 persons over this ten-year period.
2 The yellow -- I'm not sure if it's the yellow or the orange. I
3 believe it's the yellow is slight growth, 0 to 250, and the red
4 area is an area of Hispanic population decline.

5 That red area corresponds to a small area which is a
6 combination of land that is -- that has moved from residential
7 into industrial use, and also a small area of gentrification.
8 The black boundaries that you see here which are outlined along
9 the top are the boundaries of Assembly Districts 8 and 9. My
10 point here is simply to indicate that in terms of sheer
11 numbers, what you have here is a well-defined Hispanic enclave
12 that is growing as Hispanics are drawn to it as an area of
13 Hispanic cultural concentration.

14 As with any enclave in which people are present by choice
15 rather than by ghettoization, that is to say a process of
16 subtraction where everybody moved out leaving them stuck
17 somewhere, this is an area that is growing in the classic --
18 through the classic mechanism of an ethnic enclave through a
19 process of spacial diffusion, which means that as areas get
20 filled up with people and housing is occupied, other people are
21 drawn to it and they move into the more peripheral areas. So
22 that what can be envisioned here is a spacial expansion in
23 terms of the sheer spacial reach of this enclave through both
24 the mechanisms of population movements as one mechanism, and
25 also the maturation of the Hispanic youthful population,

1 citizen population, who are resident here now.

2 Q Okay. If you can take that off the screen. Let's try and
3 clear that. If you can put back up or keep up Exhibit 32.
4 Turn to Page 10, please. That's Table 4. Dr. Morrison, if you
5 can explain to me the significance of Table 4.

6 A This is simply a summary of the numerical change that
7 occurred over the ten-year period 2000-2010 in the area that
8 encompasses Districts 8 and 9. As you can see, the total
9 population -- the first row here -- the total population all
10 ages increased only 7 percent. Not much of a gain. However,
11 if you look at the changes in the Hispanic population, 23 and
12 one-half thousand gained replacing a loss of 16,000
13 non-Hispanics. Now that doesn't mean that there were 16,584
14 Hispanics who moved out. It's a combination of people moving
15 out and people dying off, because the non-Hispanic population
16 is an -- is more heavily concentrated in the elderly ages. So
17 what you have here is one group replacing another group in a
18 relatively fixed stock of housing, because the overall change
19 is only 7 percent, less than 1 percent per year.

20 Q Okay. In the course of this case, Dr. Morrison, you also
21 prepared a rebuttal report which is Exhibit 53?

22 A Yes.

23 Q If you could clear all of the exhibits and put up
24 Exhibit 53. On Page 5 of your rebuttal report did you reach
25 some conclusions?

1 A Yes, I did. I reached three conclusions. First of all,
2 Professor Mayer has pointed to the large disparity between the
3 Latino and non-Latino registration rates, and my analysis shows
4 that his comparison is fraught with limitations that in my
5 opinion invalidate any comparisons that one would make using
6 these measures. It simply renders the comparison
7 uninformative. He has really set up an apples and oranges
8 comparison because he has neglected to, first of all, account
9 for the fact that the denominator, he stated on the stand,
10 included non-citizens in calculating the registration rates.

11 Secondly, he has failed to adjust for the fact that the
12 Hispanic and non-Hispanic populations differ so dramatically in
13 their age structure. The consequence of that is that he's not
14 accounting for the fact that because so many of the Hispanics
15 are in the young adult ages at which registration rates are
16 relatively low, and so many of the non-Hispanic registered
17 population is in the more mature ages where registration rates
18 are high, you really can't make a valid comparison.

19 My second conclusion is that Dr. Mayer has used the wrong
20 surname list for the analysis that he performed. The list that
21 he used, as some of the text he referred to in his testimony
22 shows, is it's a quick and dirty list that's designed to give
23 you an approximate idea of what's going on, and I think the
24 figure that was cited in the text was that the technical
25 documentation indicates that that list will detect two-thirds

1 of the Hispanics and it will detect 80 percent of the Spanish
2 surname population.

3 So if you want to look at the -- at a neighborhood where
4 there's a supermarket and you want to pick out a neighborhood
5 where you ought to be stocking Hispanic food products on the
6 shelf, this is a good product to use for that purpose. It
7 doesn't matter if you have got the right level, but in a
8 comparative sense you can get it.

9 My understanding of how Dr. Mayer proceeded is that he used
10 this short list rather than the longer one, which I have
11 actually published peer-reviewed research on in terms of why
12 it's the one to use and what its advantages are and what its
13 strengths are. I believe that Professor Mayer has used this
14 foreshortened list in calculating the Hispanic share or
15 Hispanic number of registrants precinct by precinct in the data
16 matrices that he would have used for his ecological inference
17 analysis, and if that is so, and I believe it to be so from
18 reading his report, then this incomplete detection of Hispanics
19 basically totally infects his statistical analysis.

20 It's not just a matter of mismeasuring registration rates,
21 it's a matter of using a data matrix in a regression analysis
22 that is basically distorted and erroneous and could have been
23 corrected. The only way to know whether it makes a difference
24 would be to replicate his work using the entire long list of
25 12,000-plus surnames, the one that is known as the census

1 bureaus list of Spanish surnames, and I would have hoped that
2 given the advance notice he would have replicated his analysis
3 using that list, because that's the way that it's done in my
4 field, and that's the list that's used in any analysis that I
5 have been a part of or seen for purposes of figuring out which
6 group favored which candidate.

7 Q And you also had a third conclusion, and that was?

8 A The third conclusion is I was asked to gauge the Latino
9 share, the Hispanic share, of eligible voters in the newly
10 enacted 8th Assembly District relative to what that Hispanic
11 share was in the former assembly district, and I can state with
12 a high level of confidence --

13 MR. EARLE: I'm going to object to foundation. What
14 it is it's being compared to in terms of the former AD8 in 2002
15 or on census day, it's not clear. We're getting an opinion
16 about -- We don't know what we are getting an opinion about,
17 Your Honor. The foundation hasn't been laid.

18 JUDGE STADTMUELLER: That's something that Ms. Lazar
19 will have to develop, and you can certainly inquire about on
20 cross-examination, Mr. Earle.

21 BY MS. LAZAR:

22 Q Dr. Morrison, when you did your comparison, when you are
23 saying that the Latinos now comprise a larger share of all
24 eligible voters in the newly enacted 8th Assembly District than
25 they did in the former 8th Assembly District, were you looking

1 at the former 8th Assembly District as of the 2000 census or as
2 it stood in 2010?

3 A As of the 2000 census. That is to say, the former 8th
4 Assembly District as of 2002.

5 Q As of 2002?

6 A Right.

7 Q Thank you. Now were the conclusions made in your report to
8 the best of your scientific knowledge and based on your
9 reasonable probability and certainty?

10 A Yes.

11 Q And you indicated, if I can just ask you, you indicated that
12 Professor Mayer's reliance on the abbreviated surname list,
13 which if you heard him testify on the stand today, he indicated
14 was a very small piece of his analysis and really sort of
15 didn't matter in the larger puzzle. Would you agree with that
16 statement?

17 A If I understand his procedures, I think that statement is
18 totally misleading because the dataset that he would have used
19 for his ecological inference analysis was a dataset that
20 required him to measure the Hispanic share of registrants or
21 voters, one or the other. I believe he used registrants.
22 There are only two ways he could have measured that.

23 One would be to gauge Hispanics as a share of the voting age
24 population in each precinct at each point in time, and there
25 are only two points in time when you have a census, 2010 or

1 2000, and all of the intervening years would be kind of a
2 guesstimate. I shouldn't say a guesstimate, an estimate, an
3 interpolation.

4 The normal way it's done, and I suspect the way he did it,
5 was to, as he says in his report, I checked the surname against
6 the abbreviated list of surnames, and if that surname was on
7 the list, I called that person Hispanic, and if it was not on
8 the list, I called them non-Hispanic. What we know is a lot of
9 the non-Hispanics, just because they don't have a Spanish
10 surname, are not necessarily non-Hispanic, and the longer list
11 would have detected a larger number. We already have the
12 measure of it. It would have detected at least another quarter
13 count. The numbers would be higher.

14 All of that distortion would creep into all of his
15 ecological inference analyses referring to all of the elections
16 that he has made statements about. I don't know what effect it
17 would have. I'm not saying that I know what the effect would
18 be, but I know that if you are using a thermometer that is
19 calibrated and you are trying to figure out who has a fever,
20 you are going to get wrong answers.

21 Q You know that Professor Mayer submitted a rebuttal report,
22 and in that rebuttal report he had some comments to make about
23 your expert report. Since we don't have time, I would just
24 refer the Court to Pages 13 and 16 of Dr. Morrison's rebuttal
25 report which responds to Professor Mayer's comments. Do you

1 still stand by, after hearing the testimony this morning of
2 Professor Mayer, do you still stand by the opinions and
3 conclusions in your expert report and rebuttal report?

4 A I do.

5 Q And in conclusion, at the end you heard Professor Mayer
6 indicating that he based it on a number of -- based his
7 conclusions on a number of factors. What's your opinion
8 regarding the factors he based his conclusions upon?

9 A I think having based his conclusions on the use of the short
10 surname list kind of -- not kind of, but does undermine all of
11 his conclusions in the sense that the supporting data could
12 easily -- I could easily envision that they would change
13 direction in terms of conclusion, not just magnitude. So I
14 would say there's a cloud of uncertainty floating over those
15 conclusions. Some of them probably would be sustained, but I
16 think many of them might not.

17 MS. LAZAR: Thank you, Dr. Morrison.

18 JUDGE STADTMUELLER: Mr. Earle?

19 MR. EARLE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. EARLE:

22 Q Good morning, Dr. Morrison.

23 A Good morning.

24 Q Nice to see you again. I guess I want to start with you
25 said the Latino community grows at a rate of 1 percent per

1 year.

2 A I said that I project that this growth is built into the
3 population as it is now structured, and that was what I would
4 envision happening year by year.

5 Q And I guess your report is -- let's go first to -- I'm
6 sorry -- Exhibit 32, Page 9. Based on your projected growth
7 rate, you anticipate that or you predict that the Act 43 8th
8 Assembly District will not achieve a majority of Latino
9 citizens, in other words, eligible voters, until November of
10 2018, isn't that correct?

11 A That's correct.

12 Q Okay. And as far as Assembly District No. 9, according to
13 your growth rate and your projections and the way you approach
14 this analysis, the 9th Assembly District will not acquire an
15 effective voting majority of Latino citizens at all in the next
16 decade, isn't that true?

17 A It will not have attained it as of November 2020, and that's
18 a long time out into the future, yes.

19 Q Okay. So by your calculations Act 43 is not reasonably
20 calculated to produce a district in which the Latino community
21 can obtain an effective voting majority. Isn't that true?

22 A I'm a demographer. I don't render opinions about effective
23 voting majorities. That's a political science question. I
24 will be happy to tell you what my understanding of that is and
25 what political scientists say about that.

1 Q You are not a political scientist?

2 A No.

3 Q You won't quarrel with what I just asked you?

4 A I have no reason to quarrel with it, no.

5 Q That's the important thing. Now and you said, I guess in
6 Conclusion No. 3 on the prior screen -- It was Exhibit 53, the
7 three conclusions. Yes. The conclusion in the Paragraph
8 No. 22 is the one I'm interested in because what you are saying
9 here is that there are more Latinos who are eligible to vote
10 under Act 43 in the 8th Assembly District now today than there
11 were in the year 2000 in the old 8th Assembly District, right?

12 A That's correct.

13 Q But you would agree with me that there are fewer Latinos who
14 are eligible to vote in the new Act 43 8th Assembly District
15 than there were on census day in the old 8th Assembly District,
16 isn't that true?

17 A I don't know that I calculated that figure for the old one,
18 but, I mean, the two numbers can be compared and one can be
19 larger than the other or not. It is what it is. I don't know
20 what the old number was.

21 Q But you sat here and you listened to Professor Mayer's
22 testimony about that question, correct?

23 A I remember him testifying about it, but I don't remember the
24 number exactly.

25 Q But you have no quarrel with what he testified with regards

1 to that question, isn't that true?

2 A Not with that specific number.

3 Q Okay. Good. All right. Now you also testified that a vast
4 majority of Latinos under age 18 are US citizens?

5 A Correct.

6 Q Okay. And that's based on the ACS data?

7 A Yes.

8 Q Okay. But you didn't tell us about what the age
9 distribution is under the age of 18, correct?

10 A Correct.

11 Q So the percentage of Latinos who, for example, let's say who
12 are 16 to 18 who are U. S. citizens is going to be lower --
13 substantially lower than the percentage of Latinos who are 1 to
14 4 years of age?

15 A I don't know that for a fact at all. I don't know how you
16 know it for a fact. There may be some fluctuations, but I
17 wouldn't think there would be anything like what you have
18 described. I would have to collect the data. But the point is
19 that the under 18 population is predominantly citizens.

20 Q Okay. But you are not prepared and you have no opinion as
21 to -- and you can't sit here today and tell us how that age
22 distribution skews across that 0 to 18 age range?

23 A I don't think that one could get an accurate measure of it
24 with the ACS, because you are getting into a very fine degree
25 of detail by age. You might be able to talk about the, you

1 know, the age group under 10 and 10 to 18 as an aggregate, but
2 the underlying understanding about Hispanic youth in this
3 country, and that would apply to the state and to this county,
4 is that when you are talking about the under 18 Hispanic
5 population, you are talking predominantly about native born
6 Hispanics. You are talking about the adult population. You
7 are talking about many people who could be non-citizens having
8 moved here in adulthood. That's how that comes about. But I
9 don't agree with your characterization about knowing any
10 substantial differences within the under 18 group, because I
11 think that's an unknowable point at this geographic scale. You
12 might know it for the nation as a whole, but at this geographic
13 scale, the American Community Survey data would just be too
14 thin to provide any meaningful measure of that.

15 Q It doesn't make sense to you that the younger you are, the
16 more likely you are to have been born here as opposed to the
17 older you are, maybe you arrived through emigration?

18 A The premise is that Latinos under 18 do not venture forth
19 from Mexico seeking economic opportunity on their own.

20 Q They don't come with their families?

21 A Some of them come with their families, but typically the
22 adult worker migrates separately, leaves the family behind. As
23 I say, the bulk of the under 18 Latino population has been
24 measured to be citizens nationwide, and I have no reason to
25 think that that would not be so in this county.

1 Q And what percentage of the total Latino population is the
2 migrant worker who leaves his family behind?

3 A I don't have a number for that.

4 Q Have you ever done a racially polarized voting analysis?

5 A I have not conducted it myself, but I have provided the
6 input data to statisticians who have conducted it.

7 Q I would like you to tell me exactly how it is that Professor
8 Mayer used surname analysis in the course of conducting his
9 King's ecological inference racially polarized voting analysis.

10 A I'm reading from Page 20 of his report.

11 Q Fifty-five, Page 20?

12 A I'm not sure what report it is, because I have two Professor
13 Mayer reports which both have the identical title, but if you
14 go to Page 20, I can tell you if that is the one.

15 Q Is it there on the screen?

16 A Yes, that's the one there.

17 Q Okay. Why don't we take Dr. Morrison's report off. Okay.
18 Why don't you put a circle around the paragraph you are reading
19 from.

20 A I'm going to be referring to this section here (indicating).

21 Q Okay.

22 A What I have read here is Professor Mayer says, "I obtained
23 data from the Statewide Voter Registration System for the City
24 of Milwaukee. This database includes information on every
25 registered voter, including name -- I assume that 'including

1 name' is a meaningful phrase in this sentence -- address and
2 ward assignment. Using it -- I assume by that he means the
3 data in that database -- it's possible to calculate
4 registration rates for different populations -- we already know
5 that he said that's where he used it -- and to do so by direct
6 observation without relying on any aggregate data that requires
7 any kind of ecological inference."

8 Q Exactly.

9 A That's what he's said about calculating registration rates.
10 I was unable to find any reference in his reports as to how he
11 calculated the Hispanic share of registered voters that he
12 would have had to use precinct by precinct, election by
13 election, in doing his ecological inference analysis. I know
14 that he would have to have a variable like that. Where he got
15 it could be either as an approximation using census data, which
16 would be a poor one, or a preferable one, which I believe is
17 the way he did it, would be to have matched the surnames of
18 these registered voters which he says he's already working
19 with, and then for Precinct 1 he would have 500 registered
20 voters and he would say, "Of those 500, I found 100 were people
21 whose surname appeared on the short list, so I would say that
22 gives me the fraction Hispanic in that precinct." He says in
23 his report that's how he did it.

24 Q He says in his report how he did what?

25 A How he -- He said that is how he used the surname data. I

1 don't know if he used it. He doesn't say explicitly that he
2 used it for calculating precinct level registration rates, but
3 I am reading his report to be that that's what he did.

4 Q So you are guessing that he used that data. Am I
5 misinterpreting what you just testified?

6 A I'd say I'm inferring that if he did, in fact, perform
7 ecological inference analyses, rather than lying that he did,
8 if he did it, he would have had to have a measure of the
9 Hispanic share of registrants or the Hispanic share of actual
10 voters. He could have gotten that in either of two ways,
11 census data or surname data. I don't know which he used, but I
12 believe he used surname data, because he had that data and that
13 would have been the data of choice.

14 Q So this inference of yours that that's how he did it, that
15 he went and he counted precinct by precinct the Latino
16 registrants is based on your knowledge of how it is that a
17 racially polarized voting analysis is conducted, never having
18 done one yourself?

19 A No, I have been part of actually assembling the data. I'm
20 talking about the phase of the analysis that I participate in,
21 which is to assemble the variables that a statistician uses and
22 then interprets. So I'm at the -- kind the mechanic ends of it
23 where people say, "I need precinct-level data measuring this so
24 I can do the statistical analysis." I don't do the statistical
25 analysis, I provide the front-end data, and I'm inferring that

1 that's what he did.

2 You can ask him if that's what he did, but if he didn't do
3 that, he would have had to use census data, and the census data
4 would be for two points in time. He'd either know what the
5 world was like in 2000 or he would know what the world was like
6 in 2010, and for any election in between he would be
7 interpolating, and he would also be one step removed from the
8 Hispanic share of registrants because he would simply have the
9 Hispanic's share of the voting age population, which is the
10 less desirable metric.

11 Q So this inference of yours, do you hold that inference to a
12 reasonable degree of empirical certainty?

13 A I can only say it's an inference. I don't think I have
14 enough information to say that I'm -- I can't tell you how
15 certain or uncertain I am. I would like to hear what the
16 answer is directly from him, but he hasn't reported in his --
17 any of his reports how he did it, at least none that I read.

18 Q So you not asking this court to rely on your inference?

19 A I'm asking the court to question the possibility that this
20 may have been how he proceeded, and if he did proceed this way,
21 that the entire set of analyses of elections would be called
22 into question until it was properly replicated.

23 Q I see. Switching gears here, there was a map up that you
24 prepared that showed the growth rate. What exhibit number was
25 that?

1 MS. LAZAR: 1191.

2 BY MR. EARLE:

3 Q 1191. Thank you. Could you call that up, please. Could we
4 call up -- Well, let's get something clear about 1191 first.
5 The darker the green, the faster the growth rate, right?

6 A The darker the green, the larger the number of Hispanics
7 added. It's not a growth rate, it's an absolute count.

8 Q The number of folks added?

9 A That's correct.

10 Q That doesn't tell us how many Latinos were actually there,
11 correct?

12 A No.

13 Q So let's call up 185. You have seen this map before, right?

14 A Yes.

15 Q Okay. You don't quarrel with Exhibit 185, do you?

16 A I don't have any reason to, no.

17 MR. EARLE: Okay. I just wanted to make sure. Thank
18 you, Dr. Morrison. I'm done.

19 JUDGE STADTMUELLER: Ms. Lazar, do you have some
20 additional questions?

21 REDIRECT EXAMINATION

22 BY MS. LAZAR:

23 Q Dr. Morrison, I have just one quick question for you. When
24 you were looking at Professor Mayer's report and you were asked
25 about the ways that Dr. Mayer calculated the registration rate,

1 did you -- did I hear you say correctly that there are only two
2 ways that you know of that it could have been done?

3 A Yes.

4 Q And those two ways were using the census data, which is not
5 very accurate, or using the surname list, is that correct?

6 A I would say the census data, it's not that it's not
7 accurate, it's one step removed from the measure you want.
8 It's the less preferable way of proceeding, if you had the
9 choice of methods.

10 MS. LAZAR: That's all I have. Thank you,
11 Dr. Morrison.

12 JUDGE STADTMUELLER: Thank you, Doctor. You may step
13 down. You may call your next witness, Counsel.

14 MR. KELLY: Thank you, Your Honor. The GAB calls
15 Dr. Keith Gaddie.

16 RONALD KEITH GADDIE, having been first duly sworn,
17 was examined and testified as follows:

18 THE CLERK:: Mr. Gaddie, would you please state and
19 spell your full name for the court reporter.

20 THE WITNESS: Ronald Keith Gaddie, G-A-D-D-I-E.

21 DIRECT EXAMINATION

22 BY MR. KELLY:

23 Q Good morning, Mr. Gaddie.

24 A Good morning, Mr. Kelly.

25 Q Dr. Gaddie, have you been retained by the Government

1 Accountability Board with respect to this case?

2 A That's correct.

3 Q Could you describe for me if you have any experience in
4 redistricting matters?

5 A Yes, I have worked as a -- Pardon me. I have worked as a
6 testifying expert, litigation consultant and a consultant to
7 jurisdictions in redistricting matters for about 12 years.

8 Q And what types of subjects have you worked on within that
9 field of redistricting?

10 A I have worked with issues of electoral competitiveness, the
11 application and use of traditional redistricting criteria in
12 crafting maps. I have been involved in voting rights
13 litigation and dealings with maps that are designed to address
14 voting rights remedies. I have worked with local and state
15 jurisdictions in this process.

16 Q Dr. Gaddie, you are being compensated for your time here?

17 A Yes.

18 Q And at what rate?

19 A \$300 an hour.

20 Q Dr. Gaddie, did you submit expert reports in connection with
21 this case?

22 A Yes.

23 Q Okay. Could you take a look at Exhibit 30. While we are
24 waiting for the arrival of your exhibits for your reference,
25 could you describe for me how you first became associated with

1 the redistricting efforts in the State of Wisconsin?

2 A Yes. Last winter I was contacted by attorneys from Michael,
3 Best & Friedrich to be retained by them to assist them as
4 counsel to the Legislature on the crafting of the assembly and
5 congressional districts.

6 Q And what did you do in connection with that retention?

7 A A variety of things. As we have seen in the course of this
8 trial, there's a great deal of quantitative information that
9 goes into redistricting, there is information that needs to be
10 measured and considered. I worked with Michael Best and with
11 redistricting staff in identifying measures that they should
12 use in the process of redistricting, development of measures of
13 partisan responsiveness, identification of measures
14 traditionally used in redistricting, such as measures of
15 compactness, measures of core retention, measures of delay in
16 voter franchise and attempted to explain to them in some
17 instances how some of the more detailed measures, such as
18 compactness measures, worked and exactly what they contained.
19 I worked with them in the application of these measures in
20 their efforts to produce maps for the State of Wisconsin.

21 Q And, Dr. Gaddie, what qualifies you to provide that kind of
22 guidance and information to those who draw maps?

23 A Well, I have been testifying as an expert witness in
24 redistricting cases since 2001. I have been retained in other
25 states in a similar role and by local jurisdictions in that

1 capacity. So examination of my vitae, which is attached to the
2 back of Exhibit 30, details a variety of cases and
3 jurisdictions that I have been involved in, and ten years ago I
4 was retained as a testifying expert by litigants in the
5 Wisconsin redistricting.

6 Q Very good. For the sake of time, we won't go through all of
7 the items in your lengthy vitae. Could you tell me what type
8 of guidance did you give?

9 A When we go to redistrict, we have two top priorities, which
10 are two equalize the population of districts and to also ensure
11 that we act in the interest of racial fairness, that we don't
12 produce a map that has a discriminatory result. To that end,
13 my first guidance to the map makers was to ensure that we
14 crafted districts of as nearly equal population as practicable.
15 We discussed the existing minority opportunities that existed
16 in the State of Wisconsin. I discussed the need for the
17 continuity of those opportunities.

18 We attempted to identify data that would -- that I could use
19 to give me a sense of rates of voter participation in these
20 areas and to use that to attempt to give guidance to the map
21 makers regarding how they might proceed in assuring continued
22 fairness of the map for minority representation opportunities,
23 primary voter access. We discussed a variety of redistricting
24 principles that might be applied in the map, and we also
25 discussed distinct redistricting principles that are applied in

1 Wisconsin.

2 Q Like what?

3 A Well, the State of Wisconsin requires that, to the extent
4 practicable, consideration be given to county and municipal
5 boundaries, so we discussed the importance of those criteria
6 and we discussed how they were going to deal with it. We also
7 discussed this issue of disenfranchisement. In the previous
8 litigation ten years ago, this was a prominent area of
9 discussion in the expert reports not so much in testimony, but
10 it did come up in depositions, and Wisconsin has a history of
11 taking notes of this characteristic of their state senate
12 elections.

13 This is the only state I have come into where in the use of
14 a four-year senate with staggered terms this issue comes up, so
15 I was mindful of it and offered guidance to the map makers
16 regarding it. Specifically what I told them was that they
17 needed to look at prior map making, to the actions of the court
18 in previous map making, and to consult with counsel in crafting
19 a map.

20 Q Do you believe that the people that you were counseling with
21 respect to these issues, do you believe they understood what
22 your counsel was?

23 A Yes.

24 Q And do you believe that they followed that counsel?

25 A Yes.

1 Q Dr. Gaddie, I'm going to hand you a stack of exhibits. For
2 your reference, please take a look at Exhibit 30.

3 A Yes.

4 Q Can you tell me what that is?

5 A This appears to be a copy of my expert report submitted
6 December 13, 2011.

7 Q Okay. And would you also take a look at Exhibit 58, which
8 is the third exhibit from the back, actually.

9 A Yes, this is a copy of my rebuttal report submitted
10 January 13th.

11 Q All right. Are there any corrections that need to be made
12 to your original report, Exhibit 30?

13 A Yes. At the very front of the rebuttal report I note
14 corrections to the report of December 13th with regard to
15 incumbent pairing, and that appears in Table 9 of that report.
16 I also note that there are corrections that have to be made to
17 incumbent core retention. The largest core retention numbers
18 were recalculated. Professor Mayer and I discovered common
19 errors in our data and corrected those, and the analysis
20 conducted in the initial report related to core retentions is
21 repeated again with corrected data at the back of the rebuttal
22 report.

23 Now in addition to that, I would direct the Court to one
24 other correction, which is that on what would be Page 4, in the
25 second full paragraph just above Section 8, this would be the

1 second to the last paragraph of Section 7, I have a notation
2 regarding delayed voting effects, and I noted that I had
3 observed states that had delayed voting effects in state
4 senates. I had not made that observation in my initial report.
5 The footnote that was recorded there was intended to indicate
6 the states that do have delayed voting. In the process of
7 dropping the note in, I dropped in the note that indicated the
8 jurisdictions that use recall. So Footnote 5 should be
9 disregarded. Because I could not get on the internet to pull
10 the information that I have archived, I was not able to pull
11 that data up for the correction at this time.

12 Q Very good. Let's talk about some of the additional
13 redistricting principles that the plaintiffs have been
14 concentrating on in this case. One of the issues that they
15 mentioned was equal population amongst the districts. Are you
16 aware of that?

17 A Yes.

18 Q All right. Have you analyzed the population deviation in
19 Act 43 with respect to the assembly and senate districts?

20 A Yes, I have.

21 Q All right. Do the tables relating to that appear on Pages
22 12 and 13 of your report, Exhibit 30?

23 A Yes.

24 Q All right. Can you tell me what those tables tell us?

25 A Tables 1 and 2 on Pages 12 and 13 indicate the population

1 deviations of districts for the Wisconsin Assembly and
2 Wisconsin Senate both for the previous two court-crafted maps
3 of 1992 and 2002, then for the application of 2010 census data
4 to the 2002 court-drawn map, and then finally the application
5 of the 2010 census data through Act 43 in 2011.

6 Entering this redistricting in the Assembly, the range of
7 population deviation was over 48 points for the Wisconsin
8 Assembly, meaning that the assembly districts, due to
9 demographic shift, population shift, population growth, no
10 longer satisfied the one person, one vote standard.

11 Similarly, for the state senate the range is in excess of 26
12 points. Population deviations within 5 points, as the Court
13 well knows, are permissible, but there is no diminimous
14 standard of population deviation. There's an expectation of
15 population equality as equal as practicable, and then
16 population deviations can be explained by certain neutral or
17 state policies.

18 Act 43 produces a map that has an overall population range
19 in the assembly of from minus .39 percent to plus .37 percent
20 for an overall range of 76 one-hundredths of a percentage
21 point. In the state senate the overall population deviation
22 range is .62 percent with a low of minus .27 percent and a high
23 of plus .35 percent. These are not the most equally populous
24 districts I have seen drawn this cycle.

25 The State of Illinois zeroed out all of their population

1 deviations for the state legislature, but this is a very tight
2 map with regard to overall population equality.

3 Q How does it compare to the last two redistricting maps that
4 have been drawn for the State of Wisconsin?

5 A Population deviations are actually smaller in the assembly
6 for each of the last two court-crafted maps. In the senate the
7 population range is smaller than the 2002 map, but slightly
8 larger, a tenth of a point larger than for the 1992 court map.

9 Q All right. Dr. Gaddie, have you formed an opinion as to
10 whether Act 43 meets acceptable population deviation standards?

11 A It does.

12 Q How did you arrive at that conclusion?

13 A Well, again, the population deviations are very small, and
14 this is the first principle. These are highly equalized state
15 legislative districts. As I indicated, for this year from the
16 maps that I have reviewed in several states, among maps adopted
17 this is the second most equalized set of maps I have observed.

18 Q And the most equalized map is the one that went to zero?

19 A Yes.

20 Q What affects does reducing population deviation have on
21 other redistricting factors?

22 A When you go in pursuit of population equality, other
23 redistricting criteria might need to be relaxed. One thing we
24 discover is sometimes districts will become somewhat less
25 compact. Necessarily, core retention will go down. In

1 equalizing population we'll often discover that you have lower
2 degrees of core retention than if you had simply pursued trying
3 to bring districts into some presumed safe harbor. Sometimes
4 in pursuit of absolute zero we will find that municipalities,
5 townships or counties will be split. In pursuing population
6 equality other criteria fall away.

7 Q And in particular, with respect to core retention, why would
8 core retention go down when you are pursuing very, very equal
9 populations in the districts?

10 A Because as a general rule you are going to have to take
11 population from somewhere to make up for underpopulated
12 districts. If we worked with a larger population range, a plus
13 or minus 5 point range, and then we were to attempt -- and then
14 we attempted to only get just within that range, we would be
15 moving fewer people around by definition.

16 The consequence of this, though, would be that in
17 underpopulated districts, if we only made it up to a minimum
18 threshold of being within a 10 point range, which we should
19 note is not a safe harbor, is not a safe harbor, we have been
20 taught that lesson in the last decade in the Larios case, you
21 are not going to have to move as many people around. It really
22 is that simple. But the consequence is that areas that are not
23 growing as quickly or have been losing population continue to
24 be underpopulated. The areas that have grown rapidly, if you
25 bring them down to the minimally acceptable maximum population

1 will be overpopulated and will probably grow to be
2 overpopulated.

3 Moving towards zero population deviation, towards tight
4 deviations, is one way of precluding -- is one way of
5 precluding letting other interests enter into the map and
6 having the relative strength of the vote structured by it.

7 Q So this is the, in all of the maps that you have seen in
8 this redistricting cycle, this is the second best with respect
9 to population deviation?

10 A That's been enacted, yes.

11 Q Okay. Now your opinion with respect to how Act 43 addresses
12 population equality, do you hold that to a reasonable degree of
13 scientific certainty?

14 A Yes.

15 Q Now did the map makers pursue population equality with
16 respect to this map?

17 A Yes. This was a priority. This was a priority for them,
18 was to have very low population deviations.

19 Q And you mentioned that pursuing small population deviations
20 has an impact on core retention/population movement?

21 A Yes.

22 Q Let's explore that a little bit more. Can you tell me how
23 that relationship works a little bit more?

24 A Well, let's suppose we have a series of districts that are
25 arranged and that are generally underpopulated and one of the

1 districts is 15 points under population. If we're going to
2 bring it to absolute zero, we need to go find 15 percent more
3 population from surrounding districts. If we only bring it to
4 within 5 points of the ideal, we only have to go find 10
5 percent of population from surrounding districts.

6 The more we pursue population equality when we have got
7 regionally concentrated underpopulation or regionally
8 concentrated overpopulation the more people we will move around
9 by definition, because if we don't purchase population
10 equality, we will take fewer people from the surrounding
11 districts, which lessens the necessity for those districts to
12 go out and find additional people to bring them up to
13 population. So what it does is it smoothes out the ripple
14 effect that occurs in equalizing population.

15 Q All right. Now are you familiar with Dr. Mayer's testimony
16 with respect to this idea of least change to get to population
17 equality?

18 A Yes.

19 Q Do you have any opinion on the topic of least change?

20 A Well, least change maps are great maps for courts is the
21 first thing. You know, if I were to direct the Court to a
22 citation, there's a 2005 George Washington University article
23 by Professor Nathan Pearsley that talks about the various
24 strategies used by courts in crafting maps, and one of the
25 strategies is to take the steps to remedy the illegal defects

1 of any given map and to put no greater political thumb than
2 necessary on the map otherwise.

3 One way of doing this is to pursue moving no more people
4 than necessary to equalize population while also being mindful
5 of other redistricting criteria. You know, courts have
6 tremendous latitude to pursue the crafting of legal maps, but
7 as Professor Mayer noted in his testimony earlier today,
8 legislatures and courts approach redistricting differently.

9 Legislatures consider a variety of factors, including
10 political factors, in crafting maps, and we expect courts to
11 be -- to deal with those issues of the law and to rectify those
12 issues and to not induce any greater political change than
13 necessary. But the Court, the panel, doesn't need to be
14 lectured from me about that.

15 Where least change comes into play is in ascertaining the
16 extent to which the baseline map can continue forward. Now the
17 thing about least change is that you are starting with the
18 assumption that the baseline map is the only acceptable
19 foundation for crafting a map, and the baseline map will
20 represent the last legal map that a court will attempt to
21 address.

22 For a legislature, unless the state constitution or statute
23 requires them to be bound by least change, they are not bound
24 by least change. They can enact political change. The State
25 of California, you know, as Professor Mayer correctly noted,

1 the California Commission was put into place to attempt to pull
2 a degree of politics out of their redistricting. One
3 consequence is they do have a high degree of disfranchisement
4 occurring or delayed voting occurring, but they saw this as an
5 effort to undue a previous political gerrymander. The
6 California map by definition was not meant to be a least change
7 map, because the voters of California created a commission
8 which is an entity of the state to create a map, and it was
9 bound by different principles and had different priorities set
10 to it.

11 So least change can be a principle to be pursued, and it's a
12 principle often pursued by courts, it can be pursued by
13 legislatures. But what it does is it starts with the
14 assumption that you're institutionalizing the incumbent
15 districts, you are maintaining the continuity of representation
16 between the incumbents and their constituents. Again,
17 Professor Mayer correctly notes incumbents do not have a
18 property right to their district. Professor Mayer and I have
19 both said this in public before, and it's true. But when you
20 enact least change, you are maintaining a continuity of
21 representation, and who does the voter have a continuity of
22 representation relationship with.

23 Let me start over. When you assume least change, you are
24 assuming a continuity of representation for the voter. Who
25 does the voter have that representative relationship with other

1 than the law maker. So the incumbent is a component of core
2 retention, and the incumbent is a component of the least change
3 criteria. Now it's permissible to have least change in the
4 context of the constituency in general, as well. The incumbent
5 retires, the constituency is based upon a identifiable
6 community of interest. But most often when we hear least
7 change we're talking about continuing the incumbent's district
8 and continuing the relationship from the last election -- of
9 the previous constituency into the redrawn constituency that
10 that incumbent enjoyed with his voters, whether they choose to
11 retain him or reject him.

12 Q Is there any problem with a legislature pursuing a least
13 change map?

14 A Well, again, if you have any institutionalized bias in the
15 shape of your map, you are going to continue those in a least
16 change map. It may be that a legislature's majorities change;
17 majorities have different priorities.

18 Q Is there any requirement that legislatures follow a least
19 change approach?

20 A For the State of Wisconsin I have no knowledge of a
21 requirement. I have never seen that requirement articulated
22 outside the court context, and I have articulated it myself in
23 legislation, in litigation, but least change isn't just about
24 moving the fewest people around, it's also about maintaining
25 the political balance in the district. It's about maintaining

1 possibly the distribution of seats in terms of geography
2 mindful of one person, one vote. It's about not substantially
3 deviating the compactness of the districts compared to the
4 baseline map. It is about maintaining the previous map in as
5 much of its form as possible, mindful of one person, one vote.

6 Q Very good. Can we go to Exhibit 1017, please. Turn to
7 Exhibits 2 and 3 to that expert report.

8 A Can I get some more water? I have picked up a dry cough.

9 Q Thank you. Can you tell me what Exhibits 2 and 3 show us in
10 Dr. Mayer's report?

11 A Exhibit 2 is the population shifts in the assembly
12 districts. Exhibit 3 is the population shifts in the senate
13 districts.

14 Q All right. In Column 7 of Exhibit 2 he has a column headed,
15 "Ratio of Total Population Shift to Required Shift." Do you
16 see that?

17 A Yes.

18 Q Did he ever identify what the required shift is?

19 A The acquired shift is the minimum number of people who would
20 have to be moved into the district or out of the district to
21 bring it to population ideal.

22 Q Okay. Now in the context of actually drawing a statewide
23 map, does that number actually represent the required shift?

24 A More than likely not.

25 Q Why is that?

1 A Well, again, the nature of how the districts are allocated,
2 parts of the state grow faster than others parts, some parts of
3 the state may even lose population. The consequence is that
4 the shift required in one district is going to be dependent on
5 the shifts required of the districts around it. A legislative
6 map is an organic thing in that respect, which is that changes
7 in one area are going to require -- are going to affect the
8 changes made in other areas, and this is one of the issues we
9 run into in equalizing population. Every once in awhile you
10 will find a map, maybe a congressional map, where you can pull
11 this off, but the more parts you have in motion, the more
12 difficult it will become to do this.

13 Q And in the State of Wisconsin there are 99 parts in motion
14 with respect to the assembly, is that right?

15 A Yes, and those parts are in motion with respect to 33 other
16 parts that sit over top of them.

17 Q Okay. In order to find out what the ratio of total
18 population shift to what's actually required, wouldn't you have
19 to draw a map that considered nothing but least change and then
20 compare that map to the map that was drawn?

21 A You might actually have to draw several maps.

22 Q Why is that?

23 A Well, because one of the issues in redistricting is where
24 you start. Depending on the corridor you pick, that's going to
25 dictate your subsequent moves. It's like the gag about the guy

1 who starts painting the floor of his house and paints himself
2 into a corner. This is something of an issue.

3 If we start in an area of high population and we start
4 pulling numbers down, we might arrive at the temptation to, for
5 example, just create a new district. This new district -- We
6 may end up with a whole new district. This district has no
7 core or it has a complete core because you took another
8 district and cut it in half.

9 So what's going to happen is, depending upon where you
10 start, that's going to dictate where you can take population
11 from surrounding areas. As Professor Mayer pointed out, which
12 direction you go will have an impact. You don't have to move
13 in one direction. Maybe you have one district that has three
14 other districts around it and you can pick three directions to
15 go in.

16 Let me clarify. In the previous trial Judge Easterbrook
17 made note of the value and power of hexagons. If you look at a
18 hexagon, it's surrounded by six other hexagons. If a district
19 is a hexagon and we have six other hexagons around it, each of
20 which has variable and different amounts of population, the
21 number of people who have to be moved in each hexagon is going
22 to be dictated in part upon which hexagon we took population
23 away from to create the district. So where we start is going
24 to have a strong influence on where we end up.

25 Q All right. Do you have an opinion, Dr. Gaddie, on whether

1 Act 43 impermissibly assigned population to new districts?

2 A I don't believe it did.

3 Q What do you base that opinion on?

4 A Well, again, it's, you know, again, in part just based upon
5 experience. These were not -- It's not a least change map, but
6 we don't have a situation where substantial majority of the
7 voters are finding themselves in new districts. We have a
8 reasonable degree of core retention.

9 But beyond that, we have substantial variability in core
10 retention across the incumbents of both parties. There are
11 some districts that have very high retention and some districts
12 that have very low retention, and there are reasons why this is
13 the case. Because map makers consider more than core retention
14 in equalizing population, the application of other
15 redistricting criteria influence the degree of core retention
16 in addition to the availability of people.

17 Q Dr. Gaddie, do you hold your opinion with respect to core
18 retention/population movement to a reasonable degree of
19 scientific certainty?

20 A To a reasonable degree of scientific certainty, yes.

21 Q Okay. Dr. Gaddie, were you retained to do a Thornburg
22 versus Gingles analysis of Act 43?

23 A I was not retained to do a Thornburg versus Gingles analysis
24 of Act 43.

25 Q Do you recall being asked about some of the Gingles factors

1 in your deposition?

2 A Yes, I do.

3 Q Do you recall being asked whether you believed that the
4 Latino community was politically cohesive in the neighborhood
5 of Assembly Districts 8 and 9?

6 A I do recall making that statement in my deposition.

7 Q What did you say?

8 A Well, I was asked about my degree of agreement with
9 Paragraph 23 of one of plaintiffs' filings, and what I
10 indicated was, I don't recall the exact words, but I agreed
11 that I thought that the Latino vote was cohesive, that it had a
12 good level of cohesiveness, political cohesion.

13 Q And what did you mean by political cohesion when you said
14 that?

15 A Well, two things. One is that in the United States in
16 general Latino voters, outside of South Florida, Cubans, are
17 generally Democratic voters. The electoral data I looked at in
18 the process of this redistricting and the creation of the map
19 indicated a strong Democratic preference in the areas that
20 Districts 8 and 9 are in Act 43. In addition to this, looking
21 at the political behavior of the area in old Assembly 8, which
22 has consistently elected a Democrat, and in particular a Latino
23 Democrat for 14 years, this shaped my opinion.

24 Q All right. When you made that statement were you referring
25 to their preference for voting for Democrats or were you

1 expressing an opinion on ethnic cohesion?

2 A I was expressing a preference for political cohesion within
3 the ethnic group.

4 Q Okay. And that political cohesion was in voting for
5 Democrats?

6 A Yes.

7 Q Dr. Gaddie, did you consider delayed voting issues when
8 giving instructions on how to develop this matter?

9 A Yes.

10 Q And what instructions did you give?

11 A As I noted previously, the instruction that I gave to the
12 map makers was to be mindful of previous delayed voting and to
13 be mindful, in particular, of how the courts have dealt with it
14 and to make reference to the previous maps of the court and the
15 previous court's opinion regarding delayed voting in Wisconsin.

16 Q All right. Do you know if there's any maximum threshold
17 beyond which delayed voting may not occur?

18 A I don't know.

19 Q Okay. Let's just back up half-a-step. Let's talk a little
20 bit about what actually happens with this concept of delayed
21 voting. What are we talking about when we say "delayed
22 voting?"

23 A Well, in the context of this redistricting cycle, if I were
24 a voter who lived in a district that had voted in 2008 for the
25 state senate and redistricting had moved my residency into a

1 district, districts lines that have been drawn around my
2 residency to move me into a district that had voted in 2010 and
3 would vote again in 2014, this would delay my opportunity to
4 vote for state senator for two additional years.

5 Q So come Election Day 2012, that voter can go to the polls,
6 yes?

7 A Yes.

8 Q And would be casting a ballot, right?

9 A Yes.

10 Q Wouldn't be prohibited from voting?

11 A Correct.

12 Q It would just be that there was no senator on the ballot for
13 him to vote?

14 A There would be no senate race on the ballot to vote in,
15 correct.

16 Q What role in the whole pantheon of redistricting principles
17 does delayed voting play?

18 A Well, again, I have only seen this here. I have only seen
19 this at issue here. I appreciate Professor Mayer bringing to
20 my attention the California Redistricting Commission's notation
21 regarding this, as well, but this is a check on the map. It
22 could be a principle that the legislature could draw -- choose
23 to draw map on, if they wanted to, but it is not a principle
24 that I have run into like the preservation of county and
25 municipal boundaries or compactness across the country. It is

1 an area of -- there are certain -- If we look at redistricting
2 principles, we have superior principles of equal population and
3 racial fairness. Then we have a variety of secondary and
4 neutral principles that are often involved, compactness,
5 treatment of political subdivisions, communities of interest
6 which most anyone can define now. It's in the eye of the
7 beholder, as Bruce Cain has observed, a political scientist at
8 Cal, but then there are these back checks on the political
9 impact of the map. Evaluating the partisan competitiveness of
10 the map before and after redistricting might be a check.
11 Courts will often engage this.

12 Similarly, a disenfranchisement check would be a good back
13 end check, if it's an issue of concern, as it is here in
14 Wisconsin, but I have never seen it advanced as the first
15 principle to be accomplished in the redistricting.

16 Q Did you analyze Act 43 in terms of whether there was too
17 much delayed voting?

18 A I did analyze the amount of delayed voting in Act 43, yes.

19 Q Did you compare that to anything else?

20 A Yes, I did. I looked at the previous two maps crafted in my
21 rebuttal report. I also made note of proposed maps from the
22 previous redistricting with regard to the amount of delayed
23 voting that was contained in those maps.

24 Q Are you aware of the -- that Dr. Mayer opined about various
25 maps in the 2002 redistricting efforts in the State of

1 Wisconsin?

2 A Yes.

3 Q What do you know about those?

4 A Those maps, as a general rule, had higher rates of delayed
5 voting than the maps that were adopted by the court, and higher
6 rates of delayed voting than the maps that I testified -- that
7 I analyzed and testified on behalf of in that trial.

8 Q And how do some of those maps compare to Act 43?

9 A They are comparable or higher in terms of delayed voting.

10 Q That is the maps about which Dr. Mayor testified in 2002 had
11 higher delayed voting than Act 43?

12 A That's correct.

13 Q Dr. Gaddie, do you have an opinion as to whether Act 43
14 causes an unusual amount of delayed voting?

15 A No.

16 Q Well, do you have an opinion?

17 A Yes.

18 Q What's your opinion?

19 A My apologies. My opinion is that it does not create an
20 unusual amount of delayed voting. I have put this into two
21 comparative -- three comparative contexts. The first is that
22 compared to previous maps in the State of Wisconsin, by
23 proportion or number the level of delayed voting is not higher
24 than what we have witnessed in the state in the past.

25 The second is looking at Wisconsin as one of the

1 half-a-dozen states in the U. S. that have delayed voting in
2 their state senates, as Professor Mayer previously noted in his
3 testimony, looking at my report Wisconsin ranks ahead of four
4 of the six states, four of the other five states, ranking only
5 behind Oregon.

6 Professor Mayer does note that there are a variety of
7 differences in these states, but one is a commission state, two
8 are political commission states and one was a map drawn by a
9 Republican dominated state legislature, actually, in my home
10 state. But Wisconsin fared well compared to the comparison
11 set, and the Legislatures map this year does fair better than
12 the maps that were advanced by Plaintiffs in the previous
13 litigation ten years ago for this court to adopt.

14 Q Dr. Gaddie, do you know of any factors that may have caused
15 some of the delayed voting that is a part of Act 43?

16 A Again, part of the delayed voting is occurring because of
17 the necessity of equalizing population across districts.

18 Q Do you know would it be fair for a legislature to decide
19 that it wanted to reunite communities of interest, even though
20 that might cause some additional delayed voting?

21 A Well, again, it's up to the legislature to decide which
22 criteria they want to apply, but the consideration of
23 communities of interest has also been recognized as a criterion
24 to be applied by legislatures.

25 Q Dr. Gaddie, do you hold your opinion with respect to the

1 topic of delayed voting with respect to Act 43 to a reasonable
2 degree of scientific certainty?

3 A To a reasonable degree of scientific certainty, yes.

4 Q And then just in general as we close, can you tell me what
5 role these traditional redistricting principles are supposed to
6 play in a legislature's efforts to adopt a new map?

7 A They are there for legislatures to consider. Legislatures
8 set their criteria based upon their constitutional obligations
9 or legal obligations and their state constitutional
10 obligations. Beyond that, it's within their right, depending
11 on their state law, to designate criteria that they might
12 pursue in crafting maps.

13 Q And would you expect the legislature to keep an exhaustive
14 record of every decision they made about where to place
15 individual district lines?

16 A It would be difficult. You are talking about keeping up
17 with every decision that's been made about the placement of, in
18 this state, 5 million people across 99 constituencies.

19 Q Do you know how long it took to develop the map that became
20 Act 43?

21 A At least months.

22 Q And there was a team of people working on it?

23 A That's my understanding, yes.

24 Q Do you know if this was an iterative process?

25 A Redistricting is an iterative process. It is a process of

1 taking an initial look at the map, crafting working templates,
2 working with districts, interacting with law makers.

3 For example, I have a former student who was the
4 Redistricting Coordinator for the State of Oklahoma, and his
5 process in the state house of representatives was satisfy the
6 needs of 101 law makers, each of whom had a district, and the
7 puzzle pieces each of them demanded did not fit together
8 perfectly. So there are, for staff doing this work, a variety
9 of inputs coming from those individuals who control the mapping
10 from leadership, from law makers, from the people who -- on
11 whose behalf they staff and on whose behalf they work.

12 Q Would it be fair to say the final map is a distillation of
13 all the prior iterations and trials and errors in getting to a
14 final product?

15 A Yes. Yes, it is the consequence of numerous inputs.

16 MR. KELLY: Thank you, Dr. Gaddie. I have nothing
17 further at this point.

18 JUDGE STADTMUELLER: Thank you, Mr. Kelly. Mr.
19 Earle?

20 MR. EARLE: Thank you, Your Honor. I'm going to go
21 first, Your Honor, and be very brief because Professor Gaddie
22 focused mostly on the other issues in the case.

23 CROSS-EXAMINATION

24 BY MR. EARLE:

25 Q Good afternoon, Professor Gaddie.

1 A Hello, Mr. Earle. How are you?

2 Q Good. Nice to see you again.

3 A Likewise.

4 Q Do you recall when I deposed you back on January 20th of
5 2012?

6 A Yes.

7 Q Okay. And I asked you a whole series of questions about the
8 work you did when you were under contract to Michael, Best &
9 Friedrich to help them develop the map for the state
10 legislature, correct?

11 A Yes.

12 Q Okay. And you were architecturally involved in creating
13 these maps in Act 43, correct?

14 A I'm going to ask you to define the term "architecturally
15 involved." I want to know what you think the term means before
16 I agree to it.

17 Q Well, I will substitute another term so we don't have to
18 quibble. You were hands-on involved in helping to draft the
19 map that became Act 43, correct?

20 A I was present when the maps were being created. I did not
21 lay hand on a mouse. I did not draft a district.

22 Q But you analyzed statistics and you provided advice to the
23 folks who were doing those things?

24 A Yes.

25 Q Okay. And you are very experienced in the area of

1 redistricting?

2 A Yes.

3 Q Okay. And you are familiar with the Gingles prongs, right,
4 the three Gingles prongs?

5 A Yes.

6 Q You have dealt with those in the course of your work many,
7 many times, right?

8 A Yes.

9 Q You have written about them?

10 A Yes.

11 Q You understand the import of each one?

12 A Yes.

13 Q And you know how they are applied to the facts in each case
14 that you study?

15 A Yes.

16 Q Okay. And during your deposition at Page 83, if we could
17 call that up, the Keith Gaddie deposition, Page 83, Line 20
18 through Line 24, if you would call that up. I asked you
19 whether you were aware of what the allegations against Act 43
20 were in the complaint when you were told that you were to
21 defend the maps in Act 43, correct?

22 A Yes.

23 Q And you answered?

24 A Yes.

25 Q Okay. And that's because you had reviewed the Voces de La

1 Frontera complaint?

2 A I had examined it when I received it, yes.

3 Q And then a little later in the deposition at Page 90, Line 9
4 through Page 91, Line 19 -- Can we get them side by side and
5 highlight it?

6 A I can read it.

7 Q But I want the Court to be able to see it, as well. I
8 wonder if we can get them together.

9 A My apologies, Mr. Earle.

10 Q That's fine. We will take a moment here. There we go. Now
11 when I asked you this question you had in front of you a copy
12 of the Voces de la Frontera complaint, right?

13 A Yes.

14 Q And I read to you, I said, "Okay. Paragraph 23. Over the
15 course of the last decade, the political and electoral conduct
16 of Latino voters on Milwaukee's near south side in the vicinity
17 of the recently reapportioned 8th and 9th Assembly Districts
18 demonstrates that the Latino community is politically
19 cohesive," and I asked you, "Do you agree with that statement,"
20 and you answered?

21 A "I generally agree with that statement," close quote.

22 Q And then I asked you again, I said, "In fact, you wrote a
23 note that's on your thumb drive that says you think the Latino
24 community is remarkably political cohesive," and you said?

25 A "Yes, that's correct."

1 Q Okay. Then I went on to the next paragraph of the complaint
2 starting at Line 25, and I said, "I'm sorry. Okay.
3 Twenty-four, Paragraph 24. Over the course of the last decade,
4 the political and electoral conduct of the non-Latino Caucasian
5 voter on Milwaukee's near south side in the vicinity of the
6 recently reapportioned 8th and 9th Assembly Districts
7 demonstrates the existence of a pattern of ethnically polarized
8 voting in that said non-Latino Caucasian voters usually vote as
9 a block in the absence of a special circumstances to defeat the
10 preferred candidates of the Latino voters," close quote, and I
11 said, "Do you agree with that statement," and you answered?

12 A "I don't know."

13 Q And I said, "Okay. And it's accurate to say that you will
14 not be providing any testimony at trial that contradicts that
15 statement, correct?"

16 A "Yes."

17 Q And that's where we are here today, correct?

18 A Correct.

19 Q Okay. Now you know Professor Mayer, correct?

20 A Yes.

21 Q And you believe and it's your opinion that he's qualified by
22 experience and training to conduct a racially polarized voting
23 analysis, correct?

24 A This is the first time I have seen Professor Mayer conduct
25 such an analysis, but by virtue of background and methodology,

1 he should have all the tools to be able to do that, yes.

2 Q And you, similarly, have all the tools to do it?

3 A Yes.

4 Q But you didn't do it in this case, right?

5 A Correct.

6 Q Okay. And that's because when you were -- after you were
7 hired by Michael, Best & Friedrich on behalf of the
8 legislature, you were then hired by Reinhardt on behalf of the
9 Government Accountability Board, and they didn't ask you to do
10 that?

11 A That's correct.

12 Q But you could have?

13 A I can do that analysis.

14 MR. EARLE: Thank you. Nothing further.

15 JUDGE STADTMUELLER: Thank you, Mr. Earle.
16 Mr. Poland?

17 MR. POLAND: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. POLAND:

20 Q Good morning, Dr. Gaddie.

21 A Good morning, Mr. Poland.

22 Q I'd like to get a couple things out of the way first. Can
23 we please have Exhibit 1021 brought up on the screen. I'd like
24 to put two pages up there. One is Page 3. It's actually Page
25 3 of the Summary and Conclusions from the report that's

1 attached. Do you still have your binder up there?

2 A Yes.

3 Q Do you have, Dr. Gaddie, Exhibit 1021 in front of you?

4 A Give me a moment and I will find it. What page, Mr. Poland?

5 Q It's Dr. Mayer's Partisan Analysis of Redistricting Plans
6 there a Page 3. I'd like you to have that open, and then also
7 in the same document there's Page 29. I'd like you to have
8 that open, as well.

9 A Yes.

10 Q Okay. I'd like to focus your attention on the Summary and
11 Conclusions, first of all, on Page 3. This is Dr. Mayer's
12 analysis that you were referring to when Mr. Kelly was asking
13 you questions, correct?

14 A Counselor, I'm sorry.

15 Q This is the report by Dr. Mayer in the Baumgart case in 2002
16 that you were referring to before, is that correct?

17 A Yes.

18 Q And if I draw your attention to Page 3, in Paragraph 1, the
19 last sentence, Dr. Mayer does conclude, does he not, on the
20 topic of disenfranchisement, he says, "Democratic plans are
21 superior while on others (split
22 municipalities/disenfranchisement) the Republican plans are
23 marginally preferable," correct?

24 A Yes.

25 Q I'd like you to turn then to Page 20 of the same report.

1 Dr. Mayer concludes there that are the Republican plans are
2 better on disenfranchisement, correct?

3 A Yes.

4 Q All right. You can set that to the side. Dr. Gaddie, you
5 signed an engagement letter with Michael, Best & Friedrich as
6 part of your -- for the legislature doing the redistricting
7 last year, correct?

8 A Correct.

9 Q Could we please have Exhibit 66 up on the screen, please.
10 Is this a copy of the engagement letter that you signed with
11 Michael, Best & Friedrich to perform the redistricting work for
12 the legislature last year?

13 A Yes.

14 Q Dr. Gaddie, this is not the first time you had worked with
15 Michael, Best & Friedrich on redistricting in Wisconsin, is
16 that correct?

17 A That's correct.

18 Q In 2002 you worked where Mr. McLeod and Mr. Troupis,
19 correct?

20 A Correct.

21 Q And did you work with Mr. Handrick in 2002, as well?

22 A Yes.

23 Q And you and Mr. Handrick are friends?

24 A Yes.

25 Q I'd like to turn your attention to the very first paragraph

1 of Exhibit 66. Now this states that Michael, Best & Friedrich
2 is currently engaged to represent the Wisconsin State Senate by
3 its Majority Leader Scott L. Fitzgerald and the Wisconsin State
4 Assembly by its Speaker Jeff Fitzgerald in connection with
5 matters relating to the reapportionment of the Wisconsin
6 Senate, Assembly and Congressional Districts arising out of the
7 2010 census, correct?

8 A Correct.

9 Q And you are being retained as a consultant to Michael, Best
10 & Friedrich in connection with the representation, correct?

11 A Yes.

12 Q And that's who you understood your client to be or who you
13 understood you were working for, correct?

14 A Yes.

15 Q Now I'd like to turn your attention to the paragraph under
16 the heading, "Scope of Engagement and Expectations." That
17 provides that as a consultant to MB&F, and that's Michael, Best
18 & Friedrich, in connection with representation, we expect your
19 duties to include services as an independent advisor on the
20 appropriate racial and/or political makeup of legislative and
21 congressional districts in Wisconsin. Do you see that?

22 A Yes.

23 Q And that's what you were retained to do, correct?

24 A Yes.

25 Q You were not retained as an expert to testify to that in

1 this case, though, correct?

2 A Correct.

3 Q The last sentence of the same paragraph states that these
4 consulting services may include, as well, testifying on the
5 results of your work, correct?

6 A Correct.

7 Q And you knew from the get-go that sitting in the courtroom
8 today was a possibility, correct?

9 A Correct.

10 Q You knew it was a possibility you might have to defend the
11 maps that you helped to draw, correct?

12 A I knew it was a possibility I'd have to testify when they
13 were defended, if they were brought to litigation, yes.

14 Q Now the next paragraph down provides that all work performed
15 by you in connection with the representation shall be for the
16 sole purpose of assisting MB&F in rendering legal advice to the
17 senate and assembly, correct?

18 A Correct.

19 Q And following or continuing on, it states, "Said work
20 contemplates services of a character and quality that are
21 adjunct to our services as lawyers and you shall perform said
22 work at our direction," correct?

23 A Correct.

24 Q And you were working at the direction of Michael, Best &
25 Friedrich, correct?

1 A Correct.

2 Q It continues on, "Accordingly, all communications between
3 you and MB&F, as well as communications with the senate and
4 assembly and work performed by you in connection with the
5 representation shall be confidential and made solely for the
6 purpose of assisting counsel in rendering legal advice,"
7 correct?

8 A Correct.

9 Q And then continuing on, the last paragraph. It instructs
10 that you will not discuss with or otherwise disclose to anyone
11 or with any entity other than MB&F and the senate or assembly
12 without our written authorization the nature and content of any
13 oral or written communications or any information or work
14 performed related to the representation. Correct?

15 A Correct.

16 Q And did you follow that admonition?

17 A I believe I did, yes.

18 Q Did you have any communications with anyone in the senate
19 about the work that you performed in the redistricting?

20 A Did I have any communication with anyone in the senate about
21 the work I performed in the course of the redistricting?

22 Q Correct.

23 A I had contact with the majority leader, but we did not
24 discuss the redistricting. I presented to him -- I had been
25 asked by the staff to present to him the nature of how we might

1 be able to illustrate the responsiveness of maps with regard to
2 some of that work, but that's my only contact with the senate.

3 Q Thank you. Continuing on, it states that you will not
4 disclose or permit inspection of any papers or documents
5 related to the representation without our written authorization
6 in advance. All work papers, records or other documents or
7 other things, regardless of their nature and the source from
8 which they emanate, which are related to the representation
9 shall be held by you solely for our convenience and subject to
10 our own qualified right to instruct you with respect to
11 possession and control. It continues on that any work papers
12 or materials prepared by you or under your direction belong to
13 the senate pursuant to the representation, and every page must
14 be sealed or otherwise stamped attorney-client/work-product
15 privilege/confidential. Do you see that?

16 A Yes.

17 Q Were you ever instructed by Michael, Best & Friedrich to
18 release or make public any of the documents that you prepared
19 or created in the course of your redistricting work?

20 A No.

21 Q And other than what you produced in this litigation, have
22 you continued to abide by that admonition?

23 A Yes.

24 Q Dr. Gaddie, you had testified when Mr. Kelly was asking you
25 some questions that there is no diminimous population, correct?

1 A That is correct.

2 Q Population deviation, correct?

3 A That's correct.

4 Q There is no safe harbor, correct?

5 A That's correct.

6 Q Dr. Gaddie, in the course of your work in the redistricting

7 -- Strike that question.

8 Have you studied the Hispanic districts in Milwaukee County
9 that are at issue in this case?

10 A For the purpose of my expert reports, no.

11 Q Now as far as recall elections, you were asked some
12 questions by Mr. Kelly in his direct examination, correct?

13 A Correct.

14 Q Do you recall those questions?

15 A To be honest, I would ask that they be read back.

16 Q You recall the general subject matter, correct?

17 A Yes, I recall the general subject matter.

18 Q It's true, isn't it, that people who are moved into a new
19 district by Act 43 will not vote in the 2012 general election
20 in the same district that they voted in in the recall election,
21 correct?

22 A I'm going to ask you to repeat the question. Okay. Yes,
23 yes, that would be correct. Yes.

24 Q Okay. So they will have voted in 2011 in one district, but
25 not in 2012 for officials in that same district, correct?

1 A Correct.

2 Q And that means that there will be people who will remain in
3 that district and not be moved and they will have voted twice,
4 and others who will have voted twice in the span of a little
5 bit more than a year, correct? I will strike that question.

6 That means there are people who will remain in that district
7 and not be moved, they will have voted twice in the span of a
8 little bit more than one year, while others will have only
9 voted once in that same district, correct?

10 A Yes.

11 Q Now it's true, isn't it, that less disenfranchisement
12 generally is better than more? Less voter delay is better than
13 more in the State of Wisconsin?

14 A That is the historic opinion, yes.

15 Q We talked a little bit about disenfranchisement both in the
16 direct examination and then I asked you a question about it a
17 minute or two ago. It's true that some of the states that you
18 use as comparators to Wisconsin for percentages of
19 disenfranchised voters have different requirements than
20 Wisconsin, correct?

21 A Yes.

22 Q And we talked a little bit in your deposition about the
23 State of Iowa, correct?

24 A Not in this context, but yes.

25 Q Okay. And we did determine that Iowa requires districts to

1 be composed of entire counties, to the extent that's possible,
2 correct?

3 A Correct.

4 Q And that's not a requirement in Wisconsin?

5 A Correct.

6 Q And California, likewise, we established has a non-partisan
7 redistricting process, correct?

8 A Yes.

9 Q They have a commission that they started to use, right?

10 A Yes.

11 Q Do you know that Article 21 of the California Constitution
12 states that the place of residence of an incumbent cannot be
13 considered in redistricting?

14 A Yes, which is consistent with the Iowa Commission.

15 Q And in Wisconsin the place of residence of the incumbent may
16 be considered, correct?

17 A Yes.

18 Q Now Ohio, which is another state to which there is a
19 comparison made in disenfranchisement rates, also conducts its
20 reapportionment with a reapportionment board, it's not a task
21 of the legislature, correct?

22 A Correct. Ohio used a reapportionment board, but it's not a
23 non-partisan commission.

24 Q And Missouri does have a commission, correct?

25 A Correct.

1 Q And could we have Exhibit 204 pulled up on the screen,
2 please. Could we go to Page 26, please. I'd like to draw your
3 attention to the paragraph immediately above III, Details About
4 the Districts. It's true that the California Commission
5 determined that an approach that minimized deferrals would
6 result in the most fair and effective representation for voters
7 throughout the state, correct?

8 A Correct.

9 Q I'd like to talk about Districts 8 and 9 in Milwaukee.
10 Those are Latino districts and you are familiar with those,
11 correct?

12 A I am familiar with them, yes.

13 Q And it's true that in the act of reorienting Districts 8 and
14 9 under 2011 Wisconsin Act 43, that caused low or caused the
15 core retention to be much lower than if they had been left in
16 their horizontal orientation, is that true?

17 A Yes.

18 Q Now we talked a little bit about or I think you were asked
19 some questions about the orientation -- about some of the
20 changes that were made in your testimony about core retention
21 and disenfranchisement and the justification for reconfiguring
22 some of the districts. Did you look at the reconfiguration of
23 all of the senate districts in the State of Wisconsin under Act
24 43 for the purposes of looking at core retention and
25 disenfranchisement?

1 A My report does report information on core retention for the
2 entire state, and it does report a disenfranchisement number
3 based upon all the districts in the state, yes.

4 Q Did you look at the districts around Racine and Kenosha, the
5 senate districts?

6 A In the context of the senate and in the context of
7 disenfranchisement I did not look at those districts
8 specifically.

9 Q Do you know how many voter were disenfranchised by the
10 reconfiguration of Senate Districts 21 and 22?

11 A I was in the room when Professor Mayer testified to the
12 fact. I don't recall the exact number, but it is a five-figure
13 number.

14 Q Could we have Exhibit 178 brought up on the screen, please.
15 Dr. Gaddie, Act 43 draws the districts around Racine and
16 Kenosha in a different way than they had been drawn by the
17 court in 2002, correct?

18 A Yes.

19 Q And you don't know why there was a decision made to change
20 the districts in the way they were changed, correct?

21 A Well, actually, the -- Counsel, I will direct you to
22 Exhibit 58, and I will direct you to Bullet 8A which looks at
23 the reorientation of assembly districts in the Racine/Kenosha
24 area. I was curious about the relatively low income of core
25 retention in these areas and asked staff about this, and they

1 said this was an effort to create urban-based and rural-based
2 community of interest districts, so that's my understanding of
3 why these assembly seats and senate seats reorient the way they
4 do.

5 Q Could you please have Dr. Gaddie's deposition brought up,
6 Page 73. Looking at Line 14, 14 to 21, Dr. Gaddie, were you
7 asked this question and give this answer at your deposition on
8 January 20th. "Question: Does Act 43 draw districts around
9 Racine and Kenosha in a different way than they had been drawn
10 by the court in 2002. Answer: Yes. Question: Do you know
11 why there was a decision made to change the districts in the
12 way that they were changed? Answer: No."

13 Dr. Gaddie, were you asked that question and did you give
14 that answer?

15 A I gave that answer.

16 Q Okay. Thank you. Now in the analysis that you performed of
17 core retention, you did eliminate nine of the Democratic
18 incumbent districts with the lowest core retention, correct?

19 A The exact analysis -- I was queried as to the impact of
20 these changes in these areas on incumbent core retention, so
21 while the nine lowest Democratic districts were eliminated,
22 there were also a total of four other Democratic districts and
23 five other Republican districts that were removed from the
24 analysis to test whether or not the removal of those cases from
25 the analysis makes a difference in ascertaining core retention

1 difference. This would be at tables -- This would be the
2 discussion in Section 8-1 through 8-3 in the rebuttal report
3 and reference to Tables 7 and 8 in the expert report.

4 Q And that was an exclusion from a core analysis that you had
5 never performed before you were asked to do it in this case,
6 correct?

7 A That's correct.

8 Q Turning your attention back to Districts 21 and 22, do you
9 know how the lines that encompass both Districts 21 and 22
10 changed at all, the outer boarder around Districts 21 and 22,
11 from the 2002 plan?

12 A No. My understanding is that Districts 21 and 22 -- It's
13 evident from looking at the map that District 22 was a Kenosha
14 County based district, excluding Wheatland, and District 21 was
15 a Racine County based district. The map has been reoriented to
16 put the City of Kenosha and City of Racine together in one
17 district, and put the rural areas of the counties into another
18 district.

19 Q In terms of the outer boundary of the combined districts,
20 though, there was essentially no change from 2002 to the
21 districts as they were bounded by the 2011 Wisconsin Act 43, is
22 that fair to say?

23 A The only differences were near Twin Lakes and Burlington.

24 Q Dr. Gaddie, at least as of the time we took your deposition
25 on January 20th, you didn't know who had made the decision to

1 draw specific districts identified in your rebuttal report, is
2 that correct?

3 A That's correct.

4 Q Dr. Gaddie, when you were working with Mr. Troupis and Mr.
5 McLeod and others at Michael, Best & Friedrich as part of the
6 redistricting last summer, you did look at Latino districts in
7 Milwaukee District 8 and then District 9, correct?

8 A Correct.

9 Q And you did inquire about citizen voting age population or
10 CVAP data, correct?

11 A Correct.

12 Q And you did that because you recognized that CVAP data is
13 important to assess the ability to draw a district with an
14 effective voting majority of Latinos?

15 A Yes.

16 Q And you agree that's basically fundamental to this process,
17 correct?

18 A It's a very important input, yes.

19 Q From the time that you were retained by Michael, Best &
20 Friedrich in mid-February 2011 until the time you finished with
21 your work, you traveled to Madison for that work, is that
22 correct?

23 A Yes.

24 Q For some of it, at least?

25 A Yes.

1 Q How many times did you travel to Madison?

2 A In total -- Again, I'd have to go back and review the travel
3 records. The first trip was in April. There should have been
4 travel in May or June. I believe there was travel in June, as
5 well. So those two trips for certain. Again, I'd have to go
6 back and look at my travel logs. I was spending a lot of time
7 also traveling to Chicago and Atlanta, and sometimes trips get
8 piggybacked.

9 Q Fair enough. When you did travel to Madison to work on the
10 redistricting project, you worked at the offices of Michael,
11 Best & Friedrich, correct?

12 A Yes.

13 Q And while you were there, you worked with people, including
14 Mr. Troupis, correct?

15 A Actually, I had one encounter with Jim Troupis in the
16 Michael Best offices, and we had one phone conversation about
17 this redistricting process after I was retained, and I believe
18 we had drinks out near the village out near his office one
19 evening, but my contact with Mr. Troupis was very limited.

20 Q While you were at the Michael, Best & Friedrich offices
21 working on the map, you also worked with Mr. Foltz, correct?

22 A Yes.

23 Q And Mr. Foltz is a legislative aide for Speaker Fitzgerald?

24 A Yes.

25 Q You worked with Tad Ottman, who is a legislative aide for

1 Senator Fitzgerald?

2 A Yes.

3 Q And you also worked with Handrick who was a consultant for
4 the Legislature, correct?

5 A Yes.

6 Q There were also instances where you worked with Mr. McLeod,
7 correct?

8 A Yes.

9 Q When you were working out of Michael, Best & Friedrich's
10 offices on the map, you saw parts of maps and not whole maps,
11 correct?

12 A Correct.

13 Q And you did see configurations of Districts 8 and 9,
14 correct?

15 A Yes.

16 Q Now with respect to the subject of Districts 8 and 9, you
17 looked specifically at the question of whether it was possible
18 to draw a map with an effective Latino voting majority in the
19 vicinity of the 8th Assembly District, correct?

20 A Yes.

21 Q And you recognized again the importance of the CVAP data for
22 that purpose?

23 A Yes.

24 Q You advised your clients with whom you were consulting of
25 your view that it was important to look at CVAP data for the

1 purpose of drawing that district, correct?

2 A Yes. And while we are on the issue of CVAP data, briefly,
3 the CVAP data issue has been a difficult one for redistricters
4 in this cycle. Many states were moving forward with remapping
5 in advance of release of the latest ACS, and one thing we
6 observed was that the ACS population estimates, especially for
7 major urban areas, were often off substantially. There was a
8 great deal of chatter and concern in the redistricting
9 community about the availability of reliable CVAP data. So,
10 for example, down in Illinois we were proceeding without
11 effective CVAP data to guide the redistricting, and we
12 encountered the same situation in Georgia and also up here in
13 Wisconsin.

14 Q Now you discussed the topic of getting an effective Latino
15 voting majority in the vicinity of the 8th Assembly District
16 with Mr. Troupis and Mr. Handrick at Michael Best, correct?

17 A Yes.

18 Q And in the course of those discussions you've had with them,
19 you told them it was important to make sure the maps allowed
20 for the maximum effective voting majority of Latinos possible,
21 correct?

22 A I told them it was important to craft maps that would allow
23 for the continued effect of performance of the districts as had
24 Assembly 8, yes.

25 Q And in the course of that, after looking at data on voter

1 turnout in the area, you said that you couldn't ascertain if
2 there was a circumstance where any district created down there
3 would guarantee a majority of the electorate that would Latino,
4 correct?

5 A Correct.

6 Q And the estimates that you had of Latino participation were
7 sufficiently low that you didn't have confidence that a
8 maximized district would be sufficient to guarantee that
9 Latinos by themselves could control the electoral process and
10 the outcome, correct?

11 A Correct.

12 Q And you recommended that they go to the community and ask
13 what it wanted, correct?

14 A Yes.

15 Q Could we please pull up Exhibit 63. Dr. Gaddie, these are
16 notes that you produced in this litigation, correct?

17 A Yes.

18 Q I'd like to draw your attention to the first numbered
19 paragraph. It was your conclusion that no configuration will
20 have enough Hispanic turnout to guarantee control of the
21 district based only on Hispanic votes, correct?

22 A Correct.

23 Q And you asked a question whether -- that two community
24 groups had come out strong in support of the districts,
25 correct?

1 A Yes.

2 Q All right. And you then went on to say, "If not, strong
3 credence should be paid to these communities and their desire
4 for representation," right?

5 A Correct.

6 Q And then you concluded by saying, "If this is how the
7 community wants to slice things up, the Legislature is being
8 responsive to a group of voters who are members of a
9 potentially suspect class," correct?

10 A Correct.

11 Q So you told the map makers at the time that as they moved
12 forward with this process, that the district was -- that you
13 couldn't tell them any specific percentage, 69 percent,
14 64 percent, 60 percent, 57 percent that the district was going
15 to be certain to perform, and so they needed to go to the
16 community and get that input, right?

17 A Yes.

18 JUDGE STADTMUELLER: Mr. Poland, given that the court
19 reporter may be drowned out by grueling stomachs, I think this
20 might be an appropriate time to break for lunch. We will stand
21 in recess until 1:50.

22 THE BAILIFF: All rise.

23

24

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1 UNITED STATES DISTRICT COURT)
2) SS
3 EASTERN DISTRICT OF WISCONSIN)
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7 I, KATHY A. HALMA, Official Court Reporter
8 for the United States District Court, Eastern District of
9 Wisconsin, do hereby certify that I reported the foregoing
10 proceedings and that the same is true and correct in accordance
11 with my original shorthand notes taken at said time and place.
12
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15 _____
16 KATHY A. HALMA
17 Official Court Reporter
18 United States District Court
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